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Presidential Documents

Title 3—

The President

Proclamation 10134 of January 15, 2021

Religious Freedom Day, 2021

By the President of the United States of America

A Proclamation

Faith inspires hope. Deeply embedded in the heart and soul of our Nation, this transcendent truth has compelled men and women of uncompromising conscience to give glory to God by worshiping both openly and privately, lifting up themselves and others in prayer. On Religious Freedom Day, we pledge to always protect and cherish this fundamental human right.

When the Pilgrims first crossed the Atlantic Ocean more than 400 years ago in pursuit of religious freedom, their dedication to this first freedom shaped the character and purpose of our Nation. Later, with the signing of the Declaration of Independence, the Constitution, and the Bill of Rights, their deep desire to practice their religion unfettered from government intrusion was realized. Since then, the United States has set an example for the world in permitting believers to live out their faith in freedom.

Over the past 4 years, my Administration has worked tirelessly to honor the vision of our Founders and defend our proud history of religious liberty. From day one, we have taken action to restore the foundational link between faith and freedom and promote a culture of religious liberty. My Administration has protected the rights of individual religious believers, communities of faith, and faith-based organizations. We have defended religious liberty domestically and around the world. For example, I signed an Executive Order Promoting Free Speech and Religious Liberty to ensure that faith-based organizations would not be forced to compromise their religious beliefs as they serve their communities. This includes defending the rights of religious orders to care for the infirm and elderly without being fined out of existence for refusing to facilitate access to services that violate their faith.

We have also protected healthcare providers' rights not to be forced to perform procedures that violate their most deeply-held convictions. Additionally, we have ended the misguided policies of denying access to educational funding to historically black colleges and universities because of their religious character and of denying loan forgiveness to those who perform public services at religious organizations. Throughout this difficult year, we have continued these efforts, cutting red tape to ensure houses of worship and other faith-based organizations could receive Paycheck Protection Program loans on the same grounds and with the same parameters as any other entity. We have also aggressively defended faith communities against overreach by State and local governments that have tried to shut down communal worship. Together, we have honored the sanctity of every life, protected the rights of Americans to follow their conscience, and preserved the historical tradition of religious freedom in our country.

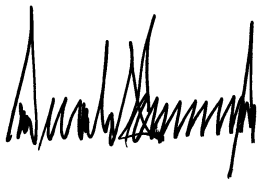
While Americans enjoy the blessings of religious liberty, we must never forget others around the world who are denied this unalienable right. Sadly, millions of people across the globe are persecuted and discriminated against for their faith. My Administration has held foreign governments accountable for trampling—in many cases, egregiously so—on religious liberty. In 2019, to shed light on this important issue, I welcomed survivors of religious persecution from 16 countries in the Oval Office, including Christians, Jews,

and Muslims, and made history by standing before the United Nations General Assembly and calling on all nations of the world to stop persecuting people of faith. The United States will never waver in these efforts to expand religious liberty around the world and calls on all nations to respect the rights of its citizens to live according to their beliefs and conscience.

On Religious Freedom Day, we honor the vision of our Founding Fathers for a Nation made strong and righteous by a people free to exercise their faith and follow their conscience. As Americans united in unparalleled freedom, we recommit to safeguarding and preserving religious freedom across our land and around the world.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 16, 2021, as Religious Freedom Day. I call on all Americans to commemorate this day with events and activities that remind us of our shared heritage of religious liberty and that teach us how to secure this blessing both at home and around the world.

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



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Presidential Documents

Proclamation 10135 of January 15, 2021

Martin Luther King, Jr., Federal Holiday, 2021

By the President of the United States of America

A Proclamation

On August 28, 1963, just a century after the Emancipation Proclamation, the Reverend Dr. Martin Luther King, Jr. led more than 200,000 Americans in a March on Washington in pursuit of jobs and freedom for all people. Standing on the steps of the Lincoln Memorial, he called on Americans ''to sit down together at the table of brotherhood'' and meet our promise of life, liberty, and the pursuit of happiness for all. On that historic day, and throughout his life, Dr. King exemplified the quintessential American belief that we will leave a brighter, more prosperous future for our children. Today, we honor and celebrate Dr. King, a giant of the civil rights movement whose nonviolent resistance to the injustices of his era—racial segregation, employment discrimination, and the denial of the right to vote—enlightened our Nation and the world.

In the face of tumult and upheaval, Dr. King reminded us to always meet anger with compassion in order to truly ''heal the hurts, right the wrongs and change society.'' It is with this same spirit of forgiveness that we come together to bind the wounds of past injustice by lifting up one another regardless of race, gender, creed, or religion, and rising to the first principles enshrined in our founding documents. Indeed, Dr. King described our Constitution and Declaration of Independence as promissory notes left by our Founding Fathers for ''every American to fall heir.'' His dream, rooted in the American Dream, was that our children might be ''judged not by the color of their skin, but by the content of their character.'' This dream, he hoped, would finally let freedom ring for all people.

As Dr. King stated in 1961, at the heart of his dream is ''equality of opportunity.'' For Dr. King, the march toward civil rights is intertwined with economic empowerment. My Administration has fully embraced this spirit, taking historic action to create jobs and uplift every community across our country and reaching the lowest unemployment rate for Black Americans ever recorded. Through the Tax Cuts and Jobs Act of 2017, we created nearly 9,000 Opportunity Zones that have produced more than $75 billion in new investment in distressed neighborhoods. My Administration has supported our Nation's incredible Historically Black Colleges and Universities (HBCUs) in several ways, including by establishing the President's Board of Advisors on HBCUs, reauthorizing more than $85 million in funding for them through the FUTURE Act, and allocating $930 million in higher education emergency relief through the CARES Act. As President, I have fully committed to the educational and economic empowerment of minority communities and young people across our Nation—and the progress we have made must continue into the future.

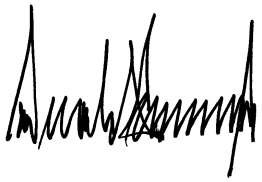
It is clear now more than ever before that we can no longer allow the American Dream to be deferred for Black Americans. However, in this march toward equality, we cannot permit any ''creative protest to degenerate into physical violence.'' As a student of nonviolence, Dr. King called on us not to ''satisfy the thirst for freedom by drinking from the cup of bitterness and hatred.'' In the national effort to achieve freedom and equality, and in this shared love of country, we must endeavor with all our might to

meet the promissory notes endowed to us by our Founding Fathers, as Dr. King fervently wished.

With the same dream, faith, and hope championed by the Reverend Dr. Martin Luther King, Jr., we recommit to upholding his legacy and meeting our sacred obligation to protect the unalienable rights of all Americans.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 18, 2021, as the Martin Luther King, Jr., Federal Holiday. On this day, I encourage all Americans to recommit themselves to Dr. King's dream by engaging in acts of service to others, to their community, and to our Nation.

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



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Presidential Documents

Notice of January 15, 2021

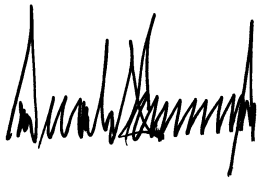
Continuation of the National Emergency With Respect to the Southern Border of the United States

On February 15, 2019, by Proclamation 9844, I declared a national emergency concerning the southern border of the United States to deal with the border security and humanitarian crisis that threatens core national security interests.

The ongoing border security and humanitarian crisis at the southern border of the United States continues to threaten our national security, including by exacerbating the effect of the pandemic caused by COVID–19. The executive branch has taken steps to address the crisis, but further action is needed to address the humanitarian crisis and to control unlawful migration and the flow of narcotics and criminals across the southern border of the United States.

For these reasons, the national emergency declared on February 15, 2019, and the measures adopted on that date to respond to that emergency, must continue in effect beyond February 15, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Proclamation 9844 concerning the southern border of the United States.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
January 15, 2021.

[FR Doc. 2021–01566
Filed 1–21–21; 8:45 am]
Billing code 3295–F1–P

Rules and Regulations

Federal Register
Vol. 86, No. 13
Friday, January 22, 2021

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

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0910; Project Identifier 2018–CE–044–AD; Amendment 39–21378; AD 2021–01–02]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for M7 Aerospace LLC Models SA26–AT and SA26–T airplanes. This AD was prompted by reports of the airplane power lever linkage detaching from the TPE331 engine propeller pitch control (PPC) shaft. This AD requires repetitively inspecting the PPC for proper torque and making any necessary corrections until the replacement of the PPC assembly and the installation of a secondary retention feature (safety wire) are done. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 26, 2021.

The Director of the Federal Register approved the incorporation by reference (IBR) of a certain publication listed in this AD as of May 5, 2017 (82 FR 15982, March 31, 2017).

ADDRESSES: For service information identified in this final rule, contact Honeywell International Inc., 111 S 34th Street, Phoenix, Arizona 85034–2802; phone: 855–808–6500; email: *AeroTechSupport@honeywell.com;* internet: *https://aerospace.honeywell.com/en/services/maintenance-and-monitoring.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0910.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0910; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jonas Perez, Aerospace Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Parkway, Fort Worth, Texas 76177–1524; phone: 817–222–5145; fax: 817–222–5960; email: *jonas.perez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to M7 Aerospace LLC Models SA26–AT and SA26–T airplanes. The NPRM published in the **Federal Register** on October 14, 2020 (85 FR 64993). The NPRM was prompted by reports of the airplane power lever linkage detaching from the TPE331 engine PPC shaft. In the NPRM, the FAA proposed to require repetitively inspecting the PPC for proper torque and making any necessary corrections until the replacement of the PPC assembly and the installation of a secondary retention feature (safety wire) are done. The FAA is issuing this AD to prevent uncommanded change to the engine power settings with consequent loss of control.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Honeywell International Inc. Service Bulletin TPE331–72–2190, dated December 21, 2011, which contains procedures for replacing or reworking the propeller pitch control assembly, incorporating a threaded hole in the splined end of the shouldered shaft, and reassembling the propeller pitch control assembly. Honeywell International Inc. Service Bulletin TPE331–72–2190, dated December 21, 2011, was previously approved for IBR on May 5, 2017 (82 FR 15982, March 31, 2017). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA also reviewed paragraph j. of M7 Aerospace SA26 Series Maintenance Manual Temporary Revision 4–02, dated July 22, 2020, which contains information related to the installation of the secondary retention feature (safety wire) on the airplane PPC lever and the PPC assembly.

Costs of Compliance

The FAA estimates that this AD affects 55 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install secondary retention feature (safety wire).	1 work-hour × $85 per hour = $85	$10	$95	$5,225.
Inspect PPC lever	1 work-hour × $85 per hour = $85 per inspection cycle.	0	85	$4,675 per inspection cycle.
Repair, replace, and/or rework PPC lever input shaft.	19 work-hours × $85 per hour = $1,615.	1,000	2,615	$143,825.

The FAA estimates the following costs to do any adjustment that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need the adjustment:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Correct attachment of the PPC lever	1 work-hour × $85 per hour = $85	$0	$85

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–01–02 M7 Aerospace LLC: Amendment 39–21378; Docket No. FAA–2020–0910; Project Identifier 2018–CE–044–AD.

(a) Effective Date

This airworthiness directive (AD) is effective February 26, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to M7 Aerospace LLC Model SA26–AT and SA26–T airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 61, Propellers/propulsors.

(e) Unsafe Condition

This AD was prompted by reports of the airplane power lever linkage detaching from the TPE331 engine propeller pitch control (PPC) shaft. The FAA is issuing this AD to address detachment of the power lever linkage to the TPE331 engine PPC shaft, which could result in uncommanded change to the engine power settings with consequent loss of control.

(f) Compliance

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

(g) PPC Lever Inspection

(1) Within 100 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 100 hours TIS, inspect the security of the PPC lever by pulling the PPC lever upward by hand to ensure it does not detach from the PPC input shaft. If the PPC lever detaches during any inspection, before further flight, comply with paragraphs (h) and (i) of this AD.

(2) The replacement/re-identification required by paragraph (h) of this AD and the installation of the secondary retention feature (safety wire) required by paragraph (i) of this AD terminate the repetitive inspections of the PPC lever attachment required by paragraph (g)(1) of this AD.

(h) Replace and Inspect the PPC Assembly

Within 600 hours TIS after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs first, unless required before further flight by paragraph (g)(1) of this AD, do the actions in either paragraph (h)(1) or (2) of this AD in accordance with the Accomplishment Instructions in Honeywell International Inc. Service Bulletin TPE331–72–2190, dated December 21, 2011, except you are not required to report information to the manufacturer.

(1) Replace the PPC assembly with the applicable new design PPC assembly.

(2) Inspect the splined end of the shouldered shaft for the presence and condition of a threaded hole and, before further flight, repair or replace the cam assembly or rework the PPC assembly, as necessary, and re-identify the shouldered shaft.

(i) Secondary Retention Feature (Safety Wire)

Before further flight after completing the actions required by paragraph (h) of this AD, install the secondary retention feature (safety wire) on the airplane PPC lever and the PPC assembly.

Note 1 to paragraph (i): Paragraph j. of M7 Aerospace SA26 Series Maintenance Manual Temporary Revision 4–02, dated July 22, 2020, contains information related to installation of the secondary retention feature (safety wire).

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD.

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

(k) Related Information

For more information about this AD, contact Jonas Perez, Aerospace Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Parkway, Fort Worth, Texas 76177–1524; phone: 817–222–5145; fax: 817–222–5960; email: *jonas.perez@faa.gov.*

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on May 5, 2017 (82 FR 15982, March 31, 2017).

(i) Honeywell International Inc. Service Bulletin TPE331–72–2190, dated December 21, 2011.

(ii) [Reserved]

(4) For Honeywell service information identified in this AD, contact Honeywell International Inc., 111 S 34th Street, Phoenix, Arizona 85034–2802; phone: 855–808–6500; email: *AeroTechSupport@honeywell.com;* internet: *https://aerospace.honeywell.com/en/services/maintenance-and-monitoring.*

(5) You may view this service information at FAA, FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued on December 28, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–01332 Filed 1–21–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 21–02]

RIN 1515–AE60

Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material From Morocco

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

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on certain archaeological and ethnological material from the Kingdom of Morocco (Morocco). These restrictions are being imposed pursuant to an agreement between the Government of the United States and the Government of Morocco that has been entered into under the authority of the Convention on Cultural Property Implementation Act. The final rule amends the CBP regulations by adding Morocco to the list of countries which have a bilateral agreement with the United States that imposes cultural property import restrictions. The final rule also contains the Designated List that describes the types of archaeological and ethnological material to which the restrictions apply.

DATES: Effective on January 15, 2021.

FOR FURTHER INFORMATION CONTACT: For legal aspects, Lisa L. Burley, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0300, *ot-otrrculturalproperty@cbp.dhs.gov.* For operational aspects, Genevieve S. Dozier, Management and Program Analyst, Commercial Targeting and Analysis Center, Trade Policy and Programs, Office of Trade, (202) 945–2942, *CTAC@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.* (hereinafter, ''the Cultural Property Implementation Act''), implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (hereinafter, ''the Convention''). Pursuant to the Cultural Property Implementation Act, the Government of the United States entered into a bilateral agreement with the Government of the Kingdom of Morocco (Morocco) to impose import restrictions on certain archaeological and ethnological material from Morocco on January 14, 2021. This rule announces the imposition of import restrictions on certain archaeological and ethnological material from Morocco.

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On April 30, 2020, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material from Morocco that is described in the Designated List set forth below in this document. These determinations include the following: (1) That Morocco's cultural heritage is in jeopardy from pillage of certain types of archaeological material representing Morocco's cultural heritage ranging in date from approximately 1 million B.C. to A.D. 1750 and certain types of ethnological material representing Morocco's cultural heritage from the Saadian and Alaouite dynasties ranging in date from approximately A.D. 1549 to 1912 (19 U.S.C. 2602(a)(1)(A)); (2) that the Moroccan government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the

interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of ''archaeological or ethnological material of the State Party'' (19 U.S.C. 2601(2)).

The Agreement

On January 14, 2021, the Government of the United States and the Government of Morocco entered into a bilateral agreement, ''Memorandum of Understanding between the Government of the United States of America and the Government of the Kingdom of Morocco Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Morocco'' (hereinafter, ''the Agreement''), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement entered into force upon signature, and enables the promulgation of import restrictions on certain categories of archaeological material ranging in date from approximately 1 million B.C. to A.D. 1750, as well as certain categories of ethnological material from the Saadian and Alaouite dynasties ranging in date from approximately A.D. 1549 to 1912. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the CBP Regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the Agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the Agreement still pertain and no cause for suspension of the Agreement exists. The import restrictions will expire on January 14, 2026, unless extended.

Designated List of Archaeological and Ethnological Material of Morocco

The Agreement between the United States and Morocco includes the categories of objects described in the Designated List set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Morocco legally and not in violation of the export laws of Morocco.

The Designated List includes certain archaeological and ethnological material from the Kingdom of Morocco. The archaeological material in the Designated List includes, but is not limited to, objects made of stone, ceramic, metal, bone, ivory, shell, glass, faience, semi-precious stone, painting, plaster, and textiles ranging in date from approximately 1 million B.C. to A.D. 1750. The ethnological material included in the Designated List contains architectural elements, manuscripts, and ceremonial and ritual objects of the Islamic culture from the Saadian and Alaouite dynasties ranging in date from approximately A.D. 1549 to 1912. This would exclude Jewish ceremonial or ritual objects.

Categories of Material

I. Archaeological
- A. Stone
- B. Ceramic
- C. Metal
- D. Bone, Ivory, Shell, and Other Organic Materials
- E. Glass, Faience, and Semi-Precious Stone
- F. Painting and Plaster
- G. Textiles, Basketry, and Rope

II. Ethnological
- A. Stone
- B. Metal
- C. Ceramic and Clay
- D. Wood
- E. Bone, Ivory, and Shell
- F. Glass and Semi-Precious Stone
- G. Leather, Parchment, and Paper

I. Archaeological Material

Archaeological material covered by the Agreement includes categories of objects from the Paleolithic, Neolithic, Phoenician, Greek, Mauritanian, Roman, Byzantine, and Islamic (Idrisid, Almoravid, Almohad, Marinid, Saadian, and Alaouite) periods and cultures ranging in date from approximately 1 million B.C. to A.D. 1750.

Approximate chronology of well-known archaeological periods and sites:

(a) Paleolithic period (c. 1 million–6500 B.C.): Thomas Quarry, Sidi Abderrahmane, Jebel Irhoud, Dar Soltane 2, Taforalt Cave

(b) Neolithic period (c. 6500–300 B.C.): Kaf Taht El Ghar, Rouazi Skhirat, Tumulus of Mzoura

(c) Phoenician period (c. 600–300 B.C.): Lixus, Mogador, Tangiers, Thamusida

(d) Mauretanian period (c. 300–49 B.C.): Lixus, Tangiers, Thamusida, Volubilis, Rirha

(e) Roman period (c. 40 B.C.–A.D. 600): Banasa, Cotta, Dchar Jdid, Kouass, Lixus, Mogador, Rirha, Sala, Tamuda, Thamusida, Volubilis

(f) Islamic period (c. A.D. 600–present):[1] Aghmat, Al-Mahdiya, Belyounech, Chichaoua, Essaouira, Fez, Figuig, Ighliz, Moulay Idris, Qsar es-Seghir, Marrakesh, Meknes, Rabat, Sala, Sijilmasa, Tetouan, Tinmal, Volubilis (Walila).

A. Stone

1. Architectural Elements—This category includes doors, door frames, window fittings, columns, capitals, bases, lintels, jambs, archways, friezes, pilasters, engaged columns, altars, prayer niches (*mihrabs*), screens, fountains, inlays, and blocks from walls, floors, and ceilings of buildings. Architectural elements may be plain, molded, or carved and are often decorated with motifs and inscriptions. Marble, limestone, sandstone, and gypsum are most commonly used, in addition to porphyry and granite.

2. Mosaics—Floor mosaics are made from stone cut into small bits (tesserae) and laid into a plaster matrix. Wall and ceiling mosaics are made with a similar technique, but may include tesserae of both stone and glass. Subjects can include landscapes; scenes of deities, humans, or animals; religious imagery; and activities, such as hunting or fishing. There may also be vegetative, floral, or geometric motifs and imitations of stone.

3. Architectural and Non-Architectural Relief Sculptures—Types include carved slabs with figural, vegetative, floral, geometric, or other decorative motifs, carved relief vases, steles, palettes, and plaques. All types can sometimes be inscribed in various languages.

Sculptures may be used for architectural decoration, including in religious, funerary (*e.g.,* grave markers), votive, or commemorative monuments. Marble, limestone, and sandstone are most commonly used.

4. Monuments—Types include votive statues, funerary or votive stelae, and bases and base revetments made of marble, limestone, and other kinds of

[1] Import restrictions concerning archaeological material from the Islamic period apply only to those objects dating from c. A.D. 600–1750.

stone. These may be painted, carved with relief sculpture, decorated with moldings, and/or carry dedicatory or funerary inscriptions in various languages.

5. Statuary—Types include large-scale representations of deities, humans, animals, or hybrid figures made of marble, limestone, or sandstone. The most common type of statuary are freestanding life-sized portrait or funerary busts (head and shoulders of an individual) measuring approximately 1 m to 2.5 m (approximately 3 ft to 8 ft) in height. Statuary figures may be painted.

6. Figurines—Figurines are small-scale representations of deities, humans, or animals made of limestone, calcite, marble, or sandstone.

7. Sepulchers—Types of burial containers include sarcophagi, caskets, reliquaries, and chest urns made of marble, limestone, or other kinds of stone. Sepulchers may be plain or have figural, geometric, or floral motifs painted on them. They may be carved in relief, and/or have decorative moldings.

8. Vessels and Containers—These include bowls, cups, jars, jugs, lamps, flasks, and smaller funerary urns. Funerary urns can be egg-shaped vases with button-topped covers. Vessels and containers can be made of marble, limestone, calcite, or other stone.

9. Furniture—Types include thrones, tables, and beds, from funerary or domestic contexts. Furniture may be made from marble or other stone.

10. Tools and Weapons—Chipped stone types include blades, borers, scrapers, sickles, burins, notches, retouched flakes, cores, arrowheads, cleavers, knives, chisels, and microliths (small stone tools). Ground stone types include grinders (*e.g.,* mortars, pestles, millstones, whetstones, querns), choppers, spherical-shaped hand axes, hammers, mace heads, and weights. The most commonly used stones are flint, chert, obsidian, and other hard stones.

11. Jewelry—Types include seals, beads, finger rings, and other personal adornment made of marble, limestone, or various semi-precious stones, including rock crystal, amethyst, jasper, agate, steatite, and carnelian.

12. Seals and Stamps—These are small devices with at least one side engraved (in intaglio and relief) with a design for stamping or sealing. Stamps and seals can be in the shape of squares, disks, cones, cylinders, or animals.

13. Rock Art—Rock art can be painted and/or incised drawings on natural rock surfaces. Tazina-style art is common from southern Morocco. Common motifs include humans, animals, such as horses, and geometric and/or floral elements.

B. Ceramic

1. Architectural Elements—These are baked clay (terracotta) elements used to decorate buildings. Examples include acroteria, antefixes, painted and relief plaques, revetments, carved and molded bricks, knobs, plain or glazed roof tiles, and glazed tile wall ornaments and panels.

2. Figurines—These include clay (terracotta) statues and statuettes in the shape of deities, humans, and animals ranging in height from approximately 5 cm to 20 cm (2 in to 8 in). Ceramic figurines may be undecorated or decorated with paint, appliques, or inscribed lines.

3. Vessels and Containers—Types, forms, and decoration vary among archaeological styles and over time. Shapes include jars, jugs, bowls, pitchers, basins, cups, storage and shipping amphorae, cooking pots (such as Roman *mortaria*), and large water jugs (*zirs*). Examples may be painted or unpainted, handmade or wheel-made, and may be decorated with burnishes, glazes, or carvings. Roman terra sigillata and other red gloss wares are particularly characteristic. Ceramic vessels can depict imagery of humans, deities, animals, floral decorations, or inscriptions.

4. Lamps—Lamps can be handmade or molded, glazed or unglazed, and may have ''saucer,'' ''slipper,'' or other forms; they typically will have rounded bodies with a hole on the top and in the nozzle, handles or lugs, and may be decorated with motifs, such as beading, human faces, and rosettes or other floral elements. Inscriptions may also be found on the body. Later period examples may have straight or round, bulbous bodies with a flared top and several branches.

5. Objects of Daily Use—These include game pieces, loom weights, toys, tobacco pipes, and andirons.

C. Metal

1. Statuary—These are large- and small-scale, including deities, human, and animal figures in bronze, iron, silver, or gold. Common types are large-scale, freestanding statuary ranging in height from approximately 1 m to 2.5 m (approximately 3 ft to 8 ft) and life-size busts (head and shoulders of an individual).

2. Reliefs—These include plaques, appliques, steles, and masks, often in bronze. Reliefs may include inscriptions in various languages.

3. Inscribed or Decorated Sheet Metal—These are engraved inscriptions and thin metal sheets with engraved or impressed designs often used as attachments to furniture or figures. They are primarily made of copper alloy, bronze, or lead.

4. Vessels and Containers—Forms include bowls, cups, plates, jars, jugs, strainers, cauldrons, and boxes, as well as vessels in the shape of an animal or part of an animal. This category also includes scroll and manuscript containers, reliquaries, and incense burners. These vessels and containers are made of bronze, silver, or gold, and may portray deities, humans, or animals, as well as floral motifs in relief. They may include an inscription.

5. Jewelry—Jewelry includes necklaces, chokers, pectorals, finger rings, beads, pendants, bells, belts, buckles, earrings, diadems, straight pins and fibulae, bracelets, anklets, girdles, wreaths and crowns, cosmetic accessories and tools, metal strigils (scrapers), crosses, and lamp holders. Jewelry may be made of iron, bronze, silver, or gold. Metal can be inlaid with items, such as colored stones and glass.

6. Seals and Sealings—Seals are small devices with at least one side engraved with a design for stamping or sealing. Types include finger rings, amulets, and seals with a shank. Seals can be made of lead, tin, copper, bronze, silver, and/or gold. Sealings are lead strips, stamped in Arabic, used for closing bags of coins.

7. Tools—Types include hooks, weights, axes, scrapers, hammerheads, trowels, locks, keys, nails, hinges, tweezers, ingots, mirrors, thimbles, and fibulae (for pinning clothing). Tools may be made of copper, bronze, or iron.

8. Weapons and Armor—This includes body armor, such as helmets, cuirasses, bracers, shin guards, and shields, and horse armor, often decorated with elaborate designs that are engraved, embossed, or perforated. This also includes both launching weapons (*e.g.,* spears, javelins, arrowheads) and hand-to-hand combat weapons (*e.g.,* swords, daggers, *etc.*) in copper, bronze, and iron.

9. Lamps—Lamps can be open saucer-type or closed, rounded bodies with a hole on the top and in the nozzle, handles, or lugs. They can include decorative designs, such as beading, human faces, animals or animal parts, and rosettes or other floral elements. This category includes handheld lamps, candelabras, braziers, sconces, chandeliers, and lamp stands.

10. Coins—This category includes coins of Numidian, Mauretanian, Greek/Punic, Roman, Byzantine, Islamic, and Medieval Spanish types that circulated primarily in Morocco, ranging in date

from the fifth century B.C. to A.D. 1750. Coins were made in copper, bronze, silver, and gold. Examples may be square or round, have writing, and show imagery of animals, buildings, symbols, or royal figures.

D. Bone, Ivory, Shell, and Other Organic Materials

1. Small Statuary and Figurines—These include representations of deities, humans, or animals in bone or ivory. These range from approximately 10 cm to 1 m (4 in to 40 in) in height.

2. Reliefs, Plaques, Steles, and Inlays—These are carved and sculpted and may have figurative, floral, and/or geometric motifs.

3. Jewelry—Types include amulets, pendants, combs, pins, spoons, bracelets, buckles, beads, and pectorals. Jewelry can be made of bone, ivory, and spondylus shell.

4. Seals and Stamps—These are small devices with at least one side engraved with a design for stamping or sealing. Seals and stamps can be in the shape of squares, disks, cones, cylinders, or animals.

5. Vessels and Luxury Objects—Ivory, bone, and shell were used either alone or as inlays in luxury objects, including furniture, chests and boxes, writing and painting equipment, musical instruments, games, cosmetic containers, and combs. Objects can include decorated vessels made of ostrich eggshell.

6. Tools—Tools include bone points and awls, burnishers, needles, spatulae, and fish hooks.

7. Manuscripts—Manuscripts can be written or painted on specially prepared animal skins (*e.g.,* cattle, sheep, goat, camel skins) known as parchment. They may be single leaves, bound as a book or codex, or rolled into a scroll.

8. Human Remains—This includes skeletal remains from the human body, preserved in burials or other contexts.

E. Glass, Faience, and Semi-Precious Stone

1. Architectural Elements—These include glass inlay and tesserae pieces from floor and wall mosaics, mirrors, and windowpanes.

2. Vessels and Containers—These can take various shapes, such as jars, bottles, bowls, beakers, goblets, candle holders, perfume jars (*unguentaria*), and flasks. Vessels and containers may have cut, incised, raised, enameled, molded, or painted decoration. Ancient examples may be engraved and/or light blue, blue-green, green, or colorless, while those from later periods may include animal, floral, and/or geometric motifs.

3. Jewelry—Jewelry includes bracelets and rings (often twisted with colored glass), pendants, and beads in various shapes (*e.g.,* circular, globular), some with relief decoration, including multi-colored ''eye'' beads.

4. Lamps—Lamps may have a straight or round, bulbous body, some in the form of a goblet, with flared top, and engraved or molded decorations and may have several branches.

F. Painting and Plaster

1. Wall Painting—Wall painting can include figurative (*i.e.,* deities, humans, animals), floral, and/or geometric motifs, as well as funerary scenes. These are painted on stone, mud plaster, and lime plaster (wet—*buon fresco*—and dry—*secco fresco*), sometimes to imitate marble.

2. Stucco—This is a fine plaster used for coating wall surfaces, or molding and carving into architectural decorations, such as reliefs, plaques, steles, and inlays.

G. Textiles, Basketry, and Rope

1. Textiles—These include linen, hemp, and silk cloth used for burial wrapping, shrouds, garments, banners, and sails. These also include linen and wool used for garments and hangings.

2. Basketry—Plant fibers were used to make baskets and containers in a variety of shapes and sizes, as well as sandals and mats.

3. Rope—Rope and string were used for a great variety of purposes, including binding, lifting water for irrigation, fishing nets, measuring, lamp wicks, and stringing beads for jewelry and garments.

II. Ethnological Material

Ethnological material covered by the Agreement includes architectural elements, manuscripts, and ceremonial and ritual objects of the Islamic culture from the Saadian and Alaouite dynasties ranging in date from approximately A.D. 1549 to 1912. This would exclude Jewish ceremonial or ritual objects.

A. Stone

1. Architectural Elements—This category includes doors, door frames, window fittings, columns, capitals, plinths, bases, lintels, jambs, archways, friezes, pilasters, engaged columns, altars, prayer niches (*mihrabs*), screens, fountains, inlays, and blocks from walls, floors, and ceilings of buildings. Architectural elements may be plain, molded, or carved and are often decorated with motifs and inscriptions. Marble, limestone, and sandstone are most commonly used.

2. Architectural and Non-Architectural Relief Sculpture—This category includes slabs, plaques, steles, capitals, and plinths carved with religious, figural, floral, or geometric motifs or inscriptions in Arabic. Examples occur primarily in marble, limestone, and sandstone.

3. Memorial Stones and Tombstones—This category includes tombstones, grave markers, and cenotaphs. Examples occur primarily in marble and are engraved with Arabic script.

4. Vessels and Containers—This category includes stone lamps and containers, such as those used in religious services, as well as smaller funerary urns.

B. Metal

1. Architectural Elements—This category includes doors, door fixtures, such as knockers, bolts, and hinges, chandeliers, screens, taps, spigots, fountains, and sheets. Copper, brass, lead, and alloys are most commonly used.

2. Architectural and Non-Architectural Relief Sculpture—This category includes appliques, plaques, and steles, primarily made of bronze and brass. Examples often include religious, figural, floral, or geometric motifs. They may also have inscriptions in Arabic.

3. Lamps—This category includes handheld lamps, candelabras, braziers, sconces, chandeliers, and lamp stands.

4. Vessels and Containers—This category includes containers used for religious services, such as Koran (*Qur'an*) cases and incense burners. Brass, copper, silver, and gold are most commonly used. Containers may be plain, engraved, hammered, or otherwise decorated.

5. Musical Instruments—This category includes instruments used in Islamic/Sufi religious ceremonies or rituals, such as cymbals and trumpets.

C. Ceramic and Clay

This category consists of architectural elements, which include carved and molded brick, and engraved and/or painted and glazed tile wall ornaments and panels, sometimes with Arabic script.

D. Wood

1. Architectural Elements—This category includes doors, door frames and fixtures, windows, window frames, panels, beams, balconies, stages, screens, prayer niches (*mihrabs*), portable *mihrabs* (*anazas*), minbars, and ceilings. Examples may be decorated with religious, geometric, or floral

motifs or inscriptions, and may be either carved or painted.

2. Architectural and Non-Architectural Relief Sculpture—This category includes panels, roofs, beams, balconies, stages, panels, ceilings, and doors. Examples are carved, inlaid, or painted with decorations of religious, floral, or geometric motifs or Arabic inscriptions.

3. Furniture—This category includes furniture, such as minbars, professorial chairs, divans, stools, and tables from Islamic ceremonial or ritual contexts. Examples can be carved, inlaid, or painted, and are made from various types of wood.

4. Vessels and Containers—This category includes containers used for religious purposes, such as Koran (*Qur'an*) cases. Examples may be carved, inlaid, or painted with decorations in religious, floral, or geometric motifs, or Arabic script.

5. Writing Implements—This category includes printing blocks, writing tablets, and Islamic study tablets inscribed in Arabic and used for teaching the Koran (*Qur'an*).

6. Musical Instruments—This category includes instruments used in Islamic/Sufi religious ceremonies or rituals, such as frame drums (*banadir*).

7. Beads—This category includes Islamic prayer beads (*mas'baha*). Examples may be plain or decorated with carved designs.

E. Bone, Ivory, and Shell

1. Architectural Elements—This category includes inlays for religious decorative and architectural elements.

2. Ceremonial Paraphernalia—This category includes boxes, reliquaries (and their contents), plaques, pendants, candelabra, and stamp and seal rings.

F. Glass and Semi-Precious Stone

1. Architectural Elements—This category includes windowpanes, mosaic elements, inlays, and stained glass.

2. Vessels and Containers—This category includes glass and enamel mosque lamps and ritual vessels.

3. Beads—This category includes Islamic prayer beads (*mas'baha*) in glass or semi-precious stones.

G. Leather, Parchment, and Paper

1. Books and Manuscripts—Manuscripts can be written or painted on specially prepared animal skins (*e.g.,* cattle, sheep, goat, camel skins) known as parchment or paper. They occur as single leaves, bound with leather or wood as a book or codex, or rolled into a scroll. Types include the Koran (*Qur'an*) and other Islamic books and manuscripts, often written in black or brown ink, and sometimes embellished with painted colorful floral or geometric motifs.

2. Vessels and Containers—This category includes containers used for Islamic religious services, such as leather Koran (*Qur'an*) cases or pouches.

3. Musical Instruments—This category includes instruments used in Islamic/Sufi religious ceremonies or rituals, such as leather drums (*banadir*).

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Les Bronzes Antiques du Maroc, Etudes et travaux d'archéologie marocaine, 1969–1994, Christiane Boube-Piccot, Éditions marocaines et internationales, Tangier.

The Roman Provincial Coinage, Multiple Volumes, 1992–, Andrew Burnett, et al., The British Museum Press, London.

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Orders 12866 and 13771

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 or Executive Order 13771 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and section 4(a) of Executive Order 13771.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (a) is amended by adding Morocco to the list in alphabetical order to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
* * * * * * *		
Morocco	Archaeological material from Morocco ranging in date from approximately 1 million B.C. to A.D. 1750, and ethnological material from Morocco ranging in date from approximately A.D. 1549 to 1912.	CBP Dec. 21–02.
* * * * * * *		

* * * * *

Mark A. Morgan, the Chief Operating Officer and Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this notice document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

Approved: January 15, 2021.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2021–01394 Filed 1–15–21; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0020]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Marker 368 and 370, Natchez, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River (LMR), between Mile Marker 368 and 370. The safety zone is needed to protect persons, property, and the marine environment from the potential safety hazards associated with line pulling operations in the vicinity of the Natchez, MS. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective without actual notice from January 22, 2021 until February 5, 2021. For the purposes of enforcement, actual notice will be used from January 14, 2021 until January 22, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0020 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 MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
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 is impracticable. Immediate action is needed to protect persons and property from the potential safety hazards associated with line pulling operations. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the line pulling operations in the vicinity of Natchez, MS.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Sector Lower Mississippi River (LMR) has determined that potential hazards associated with the line pulling operations at Mile Marker (MM) 369.0, scheduled to start on January 14, 2021, would be a safety concern for all persons and vessels on the Lower Mississippi River between MM 368.0 and MM 370.0 through February 5, 2021. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the LMR within the safety zone while line pulling operations are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from January 14, 2021 to February 5, 2021. The safety zone will cover all navigable waters of the LMR from MM 368.0 to MM 370.0. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during, the line pulling operations.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 901–521–4822. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or

designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be prohibited from entering this temporary safety zone, which will impact a one-mile stretch of Lower Mississippi River for approximately 23 days. Moreover, The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule allows vessels to seek permission to enter the zone.

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 temporary 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 that will prohibit entry on a one-mile stretch of the Lower Mississippi River. 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 Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0020 to read as follows:

§ 165.T08–0020 Safety Zone; Lower Mississippi river, Mile Marker 368 and 370, Natchez, MS.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River from Mile Marker (MM) 368 through MM 370.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 901–521–4822. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Effective period.* This section is effective without actual notice from January 22, 2021 until February 5, 2021. For the purposes of enforcement, actual notice will be used from January 14, 2021 until January 22, 2021.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: January 13, 2021.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2021–01329 Filed 1–21–21; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 390

[Docket No. 19–CRB–0009 AA]

Determination and Allocation of Initial Administrative Assessment To Fund Mechanical Licensing Collective

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; amended determination.

SUMMARY: The Copyright Royalty Judges are amending regulations to revise the allocation of the initial administrative assessment To fund the mechanical licensing collective.

DATES: *Effective:* January 22, 2021.

ADDRESSES: *Docket:* For access to the docket to read submitted documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system at *https://app.crb.gov/* and search for docket number 19–CRB–0009 AA.

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

SUPPLEMENTARY INFORMATION: On July 8, 2019, the Copyright Royalty Board initiated the *Determination and Allocation of Initial Administrative Assessment to Fund Mechanical Licensing Collective* proceeding by notice published in the **Federal Register** at 84 FR 32475, pursuant to the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, Public Law 115–264, 132 Stat. 3676 (Oct. 11, 2018), 17 U.S.C. 115(d)(7)(D)(vi) and 801(b)(8) (2018). The purpose of this proceeding was to determine the initial administrative assessment that digital music providers and any significant nonblanket licensees must pay to fund the collective total costs of the mechanical licensing collective. Pursuant to a settlement of that proceeding, the Copyright Royalty Judges (''Judges'') adopted a negotiated agreement that had been agreed to by the mechanical licensing collective (MLC) and the digital licensee coordinator (DLC) as to both the amount of the assessment and the method of allocation of that assessment among digital music providers and significant nonblanket licensees and published final regulations implementing that settlement. *See* 85 FR 832 (Jan. 8, 2020); *see also* 37 CFR 390.

On December 18, 2020, the DLC and the MLC jointly filed a motion with the Judges to modify the terms of implementation of the initial administrative assessment, invoking the Judges' authority under 17 U.S.C. 115(d)(7)(D)(vi) which gives the Judges ''continuing authority to amend a determination of an administrative assessment . . . to modify the terms of implementation, for good cause.'' In particular, the motion sought modification of the existing regulations to provide a revised method of allocation of the administrative assessment to provide flat fee rates for smaller licensees and services that exclusively operate download stores under pass-through licenses received from record labels. The motion also sought certain clarifications and technical changes in terms based upon the DLC and MLC's improved understanding of operational needs gained since the initial administrative assessment was adopted. The proposed amendments do not affect the amount of the assessments.

Based on the representations that the current allocation methodology could have ''significant impacts on smaller Licensees'', that the revised allocation methodology ''is specifically calculated to address market participation by smaller Licensees and pass-through download stores in an equitable manner, and has support from a diverse cross-section of the Licensee industry'', and that the MLC also supports the amendments and has determined that they are administrable, the Judges find good cause to amend the regulations pursuant to their authority under 17 U.S.C. 115(d)(7)(D)(vi).

List of Subjects in 37 CFR Part 390

Copyright, Licensing and registration, Music, Phonorecords, Recordings, Royalties.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 390 as follows:

PART 390—AMOUNTS AND TERMS FOR ADMINISTRATIVE ASSESSMENTS TO FUND MECHANICAL LICENSING COLLECTIVE

■ 1. The authority citation for part 390 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b).

■ 2. Revise § 390.1 to read as follows:

§ 390.1 Definitions.

Administrative assessment has the meaning set forth in 17 U.S.C. 115(e)(3).

Aggregate Sound Recordings Count means the sum of the Unique Sound Recordings Counts of each and every Allocated Licensee, calculated over the respective Quarterly Allocation calculation period.

Allocated Licensees mean licensees as set forth in § 390.3(a) who are allocated an additional share of assessments beyond the annual minimum fee.

Allocated Licensee Assessment Pool means an amount equaling 50% of each Annual Assessment and Quarterly Allocation.

Annual Assessment means the administrative assessment for each calendar year beginning with the calendar year 2021.

Annual Calculation Period means the calculation period for annual minimum fees, as set forth in § 390.3(b).

Annual minimum fee means the minimum amount each Licensee shall pay for each Annual Assessment period, as set forth in § 390.3.

Blanket Licensee means a digital music provider that is engaged, in all or in part, in covered activities pursuant to a compulsory blanket license described in 17 U.S.C. 115(d).

Certified Minimum Fee Disclosure means a Licensee's certified statement setting forth its Unique Sound Recordings Count for the respective calculation period.

Covered activity has the meaning set forth in 17 U.S.C. 115(e)(7).

Digital licensee coordinator or *DLC* has the meaning set forth in 17 U.S.C. 115(e)(9).

ECI means the Employment Cost Index for total compensation (not seasonally adjusted), all civilian workers, as published on the website of the United States Department of Labor, Bureau of Labor Statistics, for the most recent 12-month period for which data are available on the date that is 60 days prior to the start of the calendar year.

Flat Fee Licensees mean licensees as set forth in § 390.3(a) who are not allocated an additional share of assessments beyond the annual minimum fee.

License availability date has the meaning set forth in 17 U.S.C. 115(e)(15).

Licensee means either a Blanket Licensee or a Significant Nonblanket Licensee.

Mechanical licensing collective or *MLC* has the meaning set forth in 17 U.S.C. 115(e)(18).

New Licensee means a Licensee that begins engaging in covered activities on or after the license availability date.

Notice of license has the meaning set forth in 17 U.S.C. 115(e)(22).

Notice of nonblanket activity has the meaning set forth in 17 U.S.C. 115(e)(23).

Quarterly Allocation means each of four equal parts of each Annual Assessment, to be paid on a calendar quarterly basis.

Significant Nonblanket Licensee has the meaning set forth in 17 U.S.C. 115(e)(31).

Startup Assessment means the one-time administrative assessment for the startup phase of the MLC.

Threshold Licensee means an Allocated Licensee that reports at least 7.5% of the Aggregate Sound Recordings Count of all Allocated Licensees.

Threshold Licensee Assessment Pool means an amount equaling 50% of each Annual Assessment and Quarterly Allocation.

Unique Sound Recordings Count means, for each Licensee, the number of unique sound recordings used and reported per month by such Licensee in Section 115 covered activities, such as would be reflected in the information required to be reported under 17 U.S.C. 115(d), calculated as a monthly average over the respective calculation period, except that a sound recording of a musical work that is in the public domain and designated as such in a monthly report of use shall not count towards the Licensee's Unique Sound Recordings Count. For example, a Licensee's Unique Sound Recordings Count for a Quarterly Allocation calculation period will be calculated by adding together the counts of unique sound recordings reported by such Licensee to the MLC during each month of that quarter and dividing that sum by three. A Licensee's Unique Sound Recordings Count for an Annual Calculation Period will be calculated by adding together the counts of unique sound recordings reported by such Licensee to the MLC during each month of that twelve-month period and dividing that sum by twelve. In the case of a Licensee that was engaged in covered activities only for part of a Quarterly Allocation calculation period or Annual Calculation Period, the monthly average shall be calculated using only the calendar months that the Licensee was engaged in covered activities. In the case of a Licensee that was not engaged in covered activities during any part of a Quarterly Allocation calculation period or Annual Calculation Period, the monthly average shall be zero. Within each month's usage reports from a particular Licensee, a sound recording reported multiple times with the same metadata would be counted as a single sound recording, and a sound recording reported multiple times each with different metadata would be counted multiple times, once for each reporting with new or different metadata.

■ 3. Revise § 390.3 to read as follows:

§ 390.3 Annual minimum fees.

(a) *Amounts.* Subject to paragraph (e) of this section, Licensees shall pay annual minimum fees as follows—

(1) *In general.* Except as provided in paragraph (a)(2) of this section—

(i) Licensees that have a Unique Sound Recordings Count of 10,000 or less during the relevant Annual Calculation Period shall pay $2,500 and shall be Flat Fee Licensees for the respective Annual Assessment;

(ii) Licensees that have a Unique Sound Recordings Count of between 10,001 and 25,000 during the relevant Annual Calculation Period shall pay $5,000 and shall be Flat Fee Licensees for the respective Annual Assessment;

(iii) Licensees that have a Unique Sound Recordings Count of between 25,001 and 50,000 during the relevant Annual Calculation Period shall pay $10,000 and shall be Flat Fee Licensees for the respective Annual Assessment, where such Annual Calculation Period is for the Annual Assessment for the calendar year 2024 or earlier; otherwise such Licensees shall pay $60,000 and shall be Allocated Licensees for the respective Annual Assessment;

(iv) Licensees that have a Unique Sound Recordings Count of between 50,001 and 100,000 during the relevant Annual Calculation Period shall pay $20,000 and shall be Flat Fee Licensees for the respective Annual Assessment, where such Annual Calculation Period is for the Annual Assessment for the calendar year 2024 or earlier; otherwise such Licensees shall pay $60,000 and shall be Allocated Licensees; and

(v) Licensees that have a Unique Sound Recordings Count greater than 100,000 during the relevant Annual Calculation Period shall pay an annual minimum fee of $60,000 and shall be Allocated Licensees for the respective Annual Assessment.

(2) *Download store annual fee.* Licensees that engage in covered activities exclusively under authority obtained from licensors of sound recordings to make and distribute permanent downloads of musical works embodied in such sound recordings pursuant to individual download licenses or voluntary licenses shall be Flat Fee Licensees and pay the following amounts:

(i) $2,500 if the Licensee has a Unique Sound Recordings Count of 50,000 or less during the relevant Annual Calculation Period.

(ii) $5,000 if the Licensee has a Unique Sound Recordings Count of between 50,001 to 100,000 during the prior Annual Calculation Period.

(iii) $10,000 if the Licensee has a Unique Sound Recordings Count of between 100,001 to 250,000 during the prior Annual Calculation Period.

(iv) $20,000 if the Licensee has a Unique Sound Recordings Count of between 250,001 to 500,000 during the prior Annual Calculation Period.

(v) $60,000 if the Licensee has a Unique Sound Recordings Count of

greater than 500,000 during the prior Annual Calculation Period.

(b) *Annual Calculation Period.* The calculation period for annual minimum fees shall be the 12-month period that ends on the September 30th immediately preceding the start of the assessment period (*e.g.,* the annual minimum fee calculation period for the 2021 Annual Assessment shall be October 1, 2019 to September 30, 2020).

(c) *Calculation by Licensee certification (2021 and 2022)*—(1) *2021.* Each Licensee in operation on or before the license availability date shall submit to the MLC,—no later than February 15, 2021, its Certified Minimum Fee Disclosure for the 2021 annual minimum fee (*i.e.,* for the period from October 1, 2019, to September 30, 2020). Each Licensee shall submit the appropriate annual minimum fee as calculated under paragraph (a) of this section for the 2021 Assessment simultaneously with its Certified Minimum Fee Disclosure.

(2) *2022.* Each Licensee shall submit to the MLC by November 1, 2021, a Certified Minimum Fee Disclosure for the 2022 Assessment and shall pay by January 15, 2022, the appropriate annual minimum fee.

(d) *Calculation by the MLC (2023 and subsequent years).* Beginning with the 2023 Assessment and continuing in subsequent years, the MLC will calculate each Licensee's annual minimum fee based on usage reporting received from Licensees pursuant to 17 U.S.C. 115(d)(4). The MLC shall send invoices for the appropriate annual minimum fee to each Licensee. Licensees shall pay the annual minimum fee invoices from the MLC by the later of:

(1) 30 days from receipt of the invoice from the MLC; or

(2) January 15th of the respective Annual Assessment year.

(e) *New licensees.* (1) A New Licensee shall remit the lowest annual fee set forth in paragraph (a)(1) or (2) of this section, as applicable, along with its notice of license or notice of nonblanket activity to be attributable to the calendar year in which such Licensee begins engaging in covered activities.

(2) A New Licensee shall initially be deemed a Flat Fee Licensee. When the MLC calculates the Quarterly Allocation with the first calculation period pursuant to § 390.4(b) during which the New Licensee was engaged in covered activities, whether such activities were for all or part of the calculation period, the MLC shall calculate the New Licensee's Unique Sound Recording Count for that calculation period. In the event that such New Licensee has not provided timely reporting, the MLC may instead, in its discretion, use the most recent reporting from that New Licensee for such calculation. If such New Licensee is calculated to have a Unique Sound Recordings Count that exceeds the amount that would qualify it to be a Flat Fee Licensee under paragraph (a)(1) of this section, it shall be deemed an Allocated Licensee for that Quarterly Allocation and the remainder of the calendar year and shall be invoiced and pay the assessment as calculated in § 390.4 for the respective quarters, with such New Licensee's Unique Sound Recordings Count to be included in the Aggregate Sound Recording Count for such quarters.

(3) A New Licensee shall be subject to the provisions of paragraphs (a) through (d) of this section, as applicable, to determine the amount and timing of the annual minimum fees owed for the calendar year following the year when the Licensee begins engaging in covered activities, and for such purposes a New Licensee shall be treated as having a Unique Sound Recordings Count of zero for the Annual Calculation Period if it began engaging in covered activities after the end of the Annual Calculation Period. A New Licensee that has been deemed an Allocated Licensee pursuant to paragraph (e)(2) of this section shall be subject to the provisions of paragraphs (a) through (d) of this section, as applicable, to determine its status as a Flat Fee Licensee or Allocated Licensee, for calendar years following the calendar year in which it is first deemed an Allocated Licensee.

■ 4. Revise § 390.4 to read as follows:

§ 390.4 Annual Assessment allocation and payment.

(a) *Allocation formula.* Each Annual Assessment shall be divided into four equal Quarterly Allocations, after first subtracting annual fees payable by Flat Fee Licensees. The MLC may adjust Quarterly Allocations to compensate for any adjustments to the Flat Fee Licensee annual fees that occur after the initial division of the Annual Assessment. Each Quarterly Allocation shall be allocated and paid on a calendar quarterly basis. Each Quarterly Allocation shall be divided into two equal parts, allocated among Licensees according to the following formula:

(1) *Allocated Licensee Assessment Pool.* The Allocated Licensee Assessment Pool shall be allocated on a pro rata basis across all Allocated Licensees based on each Licensee's share of the Aggregate Sound Recordings Count.

(2) *Threshold Licensee Assessment Pool.* The Threshold Licensee Assessment Pool shall be allocated on a pro rata basis across Threshold Licensees based on each Threshold Licensee's share of the aggregate Unique Sound Recordings Counts of all Threshold Licensees. In the event that no Threshold Licensees exist for a Quarterly Allocation, the Threshold Licensee Assessment Pool shall become payable by all Allocated Licensees in the same manner as the Allocated Licensee Assessment Pool.

(b) *Calculation periods and timing.* The calculation period for each Quarterly Allocation shall be the three-month period that ends three months prior to the start of the respective quarter, except that the calculation period for the Quarterly Allocation for the first and second quarters of 2021 shall be the same as for the annual minimum fee for the 2021 Annual Assessment and shall be calculated based upon the information provided in the Certified Minimum Fee Disclosures, as required by this part. The MLC shall make all calculations for each respective period based upon the reporting for such period received from Licensees as of the time of calculation by the MLC, which calculation time shall not be earlier than the legal deadline for submission of reporting by Licensees for the respective period. In the event that a Licensee has not provided timely reporting for the respective calculation period at the time the MLC calculates a Quarterly Allocation, the MLC may instead use, in its discretion, the most recent reporting from that Licensee to determine that Licensee's Unique Sound Recordings Count, for the purposes of calculating the Quarterly Allocation.

(c) *Invoicing and payment of allocation*—(1) *Deadline for payment.* (i) Invoices from the MLC for Quarterly Allocation shares shall be payable pursuant to the MLC invoice no later than 45 days after receipt of the invoice from the MLC.

(ii) Invoices from the MLC to Licensees shall be deemed received on the business day after electronic transmission.

(2) *Format of invoices.* (i) The quarterly invoices issued by the MLC shall include at least the following information, where applicable:

(A) Invoice issuance date;

(B) Invoice payment due date;

(C) Amount owed, by share of Allocated Licensee Assessment Pool and Threshold Licensee Assessment Pool;

(D) Allocation of Startup Assessment;

(E) Offset of minimum fee payment against quarterly assessment; and

(F) Amount of credit for un-recouped minimum fee.

(ii) Invoices issued as a result of an allocation adjustment shall include all of the information set forth in paragraphs (c)(2)(i)(A) through (F) of this section that may be relevant, as well as an explanation of the change from the prior invoices that are affected, and the reason(s) for the adjustment.

(d) *Late reporting.* The MLC shall promptly notify the DLC of any known Licensees who have not timely submitted reports of usage as required each month pursuant to 17 U.S.C. 115(d) and 37 CFR part 210.

(e) *Recalculation of Allocated Assessment invoices.* The MLC may, in its discretion, recalculate allocations and adjust prior invoices, with the written consent of the DLC, within twelve months after the initial issuance of such invoices, in circumstances including, but not limited to, where new usage reporting is received or where a correction would alter one or more of any Licensee's Quarterly Allocation shares by at least 10%.

(f) *Recoupment of minimum-fee.* Each Allocated Licensee's minimum fee will be offset against its Quarterly Allocation shares, if any, and additional payment will not be due from a Licensee unless and until its total Quarterly Allocation shares exceed its annual minimum fee payment. To the extent that an Allocated Licensee's minimum fee exceeds that Licensee's Quarterly Allocation shares for a given Assessment period, the excess amounts will be pooled and credited pro rata to all Allocated Licensees based on the Quarterly Allocation shares for the first quarter of the following year.

(g) *Reports to DLC.* The MLC shall report to the DLC no later than 75 days after the end of every quarter the Aggregate Sound Recordings Count for that quarter.

(h) *Startup Assessment allocation and payment.* The Startup Assessment shall be allocated and paid in the same manner and on the same dates as the 2021 Annual Assessment, including as to each of the applicable provisions above, and shall be separately itemized in invoices from the MLC to Licensees. Pursuant to § 390.3, a single annual minimum fee shall be assessed for the 2021 Annual Assessment, and no additional annual minimum fee shall be assessed for the Startup Assessment.

Dated: December 29, 2020.

Jesse M. Feder,

Chief Copyright Royalty Judge.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2020–29194 Filed 1–21–21; 8:45 am]

BILLING CODE 1410–72–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XA770]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Pot Catcher/Processors in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2021 Pacific cod total allowable catch (TAC) allocated to catcher/processors using pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 16, 2021, through 1200 hours, A.l.t., September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

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 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 A season apportionment of the 2021 Pacific cod TAC allocated to catcher/processors using pot gear in the BSAI is 850 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) and inseason adjustment (85 FR 83473, December 22, 2020).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2021 Pacific cod TAC allocated as a directed fishing allowance to catcher/processors using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the BSAI.

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

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processors using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 14, 2021.

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

Dated: January 15, 2021.

Kelly Denit,

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

[FR Doc. 2021–01354 Filed 1–15–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 13
Friday, January 22, 2021

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 21 and 163

[Docket No. OCC–2020–0037]

RIN 1557–AE77

Exemptions to Suspicious Activity Report Requirements

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury (USDT).

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The OCC is inviting comment on a proposed rule that would modify the requirements for national banks and federal savings associations to file Suspicious Activity Reports. The proposed rule would amend the OCC's Suspicious Activity Report regulations to allow the OCC to issue exemptions from the requirements of those regulations. The proposed rule makes it possible for the OCC to grant relief to national banks or federal savings associations that develop innovative solutions intended to meet Bank Secrecy Act requirements more efficiently and effectively.

DATES: Comments must be received by February 22, 2021.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title ''Exemptions to Suspicious Activity Report Requirements'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

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

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0037'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0037'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

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

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

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0037'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by the following methods:

• *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0037'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov Site*'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0037'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Jim Vivenzio, Senior Counsel; Jina Cheon, Counsel; Henry Barkhausen, Counsel; or Scott Burnett, Counsel, Chief Counsel's Office (202) 649–5490; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Introduction

OCC regulations require national banks and federal savings associations to file Suspicious Activity Reports (SARs) under certain conditions. These regulations also provide for: (i) Board of director notification; (ii) filing exceptions; (iii) SAR confidentiality; (iv) recordkeeping requirements; (v) supporting documentation requirements; and (vi) limitations on liability. Requirements related to SARs are codified at 12 CFR 21.11 for national banks and 12 CFR 163.180 for federal savings associations. This proposed rule

would amend those sections to allow the OCC to issue exemptions from the regulations' SAR requirements.

II. Background

The OCC has long required its regulated institutions to report potential violations of law arising from transactions that flow through those institutions.[1] The OCC required such reporting because fraud, abusive insider transactions, check-kiting schemes, money laundering, and other financial crimes can pose serious threats to a financial institution's continued viability and, if unchecked, can undermine the public confidence in the nation's financial system generally.[2]

In 1992 Congress passed the Annunzio-Wylie Anti-Money Laundering Act, which redesigned the criminal referral process applicable to OCC supervised entities and made the reporting of certain suspicious transactions a requirement of the Bank Secrecy Act (BSA).[3] The Act permitted the Department of the Treasury to require financial institutions, including national banks and federal savings associations, to ''report any suspicious transaction relevant to a possible violation of law or regulation.'' [4] As a result, the Department of the Treasury, in consultation with the OCC, the other federal banking agencies, and law enforcement, developed the modern SAR form and reporting process, which standardized the reporting forms and created a centralized database that could be accessed by multiple law enforcement and regulatory agencies.

To implement this new reporting system, the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) issued its implementing SAR regulations in 1996 for financial institutions subject to the requirements of the BSA to, among other things, specifically address the reporting of money laundering transactions and transactions designed to evade the reporting requirements of the BSA.[5] To further implement this new reporting process and reduce unnecessary reporting burdens, the OCC and the other federal banking agencies contemporaneously amended their criminal referral form regulations to incorporate the new SAR form and reporting database, align their regulatory reporting requirements with FinCEN's BSA reporting requirements, and further refine the reporting processes.[6]

As a result of this redesign and FinCEN's implementing regulations, national banks and federal savings associations are currently required to file SARs under both OCC and FinCEN regulations. These regulations are not identical but are substantially similar with regard to the specified BSA reporting obligations required by FinCEN. Both the OCC's and FinCEN's SAR regulations require banks to file SARs relating to money laundering, transactions that are designed to evade the reporting requirements of the BSA, and transactions that have no business or apparent lawful purpose or are not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transactions after examining the available facts, including the background and possible purpose of the transactions.[7] Furthermore, with respect to the SAR confidentiality requirements in the BSA, both the OCC's and FinCEN's SAR regulations require banks to maintain the confidentiality of a SAR and any information that would reveal the existence of the SAR, outside of certain circumstances.

While the OCC and FinCEN regulations contain substantively similar requirements, including requiring reporting in certain common contexts and requiring institutions to maintain the confidentiality of SARs, the OCC and the other federal banking agencies require reporting in broader circumstances (*e.g.,* insider abuse at any dollar amount).[8] As previously noted, these violations and abuse situations can pose serious threats to financial institutions' continued viability and, if unchecked, can undermine the public confidence in the nation's financial industry.

The OCC and FinCEN SAR regulations also provide: (i) That SARs are not required for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities; (ii) that SARs are confidential and shall not be disclosed except as authorized; (iii) recordkeeping requirements for SARs and supporting documentation; (iv) that supporting documentation shall be deemed to have been filed with the SAR; and (v) that supporting documentation shall be made available to appropriate law enforcement agencies upon request. The regulations also provide a limitation on liability to any national bank, federal savings association or other financial institution and any director, officer, employee, or agent of a national bank or federal savings association or other financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or files a SAR pursuant to the regulations or any other authority. The OCC's regulations also contain a provision requiring that national banks and federal savings associations promptly notify their board of directors when a SAR has been filed.

While neither the OCC's SAR regulations nor FinCEN's SAR reporting regulation contain provisions permitting exemptions, FinCEN has general authority to grant exemptions from the requirements of the BSA, which includes granting exemptions under its SAR reporting regulations.[9] FinCEN's regulation provides that ''[t]he Secretary [of Treasury], in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of [the BSA]. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.'' [10] The Secretary has delegated this exemption authority to FinCEN.

This disparity in exemption authority makes it more difficult for the OCC to grant relief if a national bank or federal

[1] The OCC first codified this requirement in 1971 at 12 CFR 7.5225, which required national banks to submit a report to the OCC, the FBI, the U.S. attorney for the bank's district, and the bank's bonding company consisting of ''any state of facts growing out of the affairs of the bank known or suspected to involve criminal violation of any other section of the United States Code.'' 36 FR 17000, 17012 (Aug. 26, 1971). In 1986, the OCC repealed 12 CFR 7.5225 and adopted its criminal referral form regulation, 12 CFR 21.11, which required national banks to report specified suspicious transactions on a standardized criminal referral form. 51 FR 25866 (July 17, 1986). As explained below, the OCC revised 12 CFR 21.11 in the 1990s to conform to the new SAR reporting form and system.

[2] 54 FR 25839 (June 20, 1989).

[3] Public Law 102–550, 106 Stat. 3672 (1992).

[4] 31 U.S.C. 5318(g)(1). The quoted text is from section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, which was originally codified at 31 U.S.C. 5314(g). The text was moved as part of the Violent Crime Control and Law Enforcement Act of 1994.

[5] 61 FR 4326 (Feb. 5, 1996). Prior to the adoption of FinCEN's SAR regulation in 1996 and the accompanying revisions to the OCC's regulation, the OCC's criminal referral regulation did not have a specific provision that required the reporting of money laundering transactions. However, the criminal referral regulation broadly encompassed money laundering and structuring transactions as explained in the Supplementary Information section to the final rule enhancing the criminal referral process. 54 FR 25839, 25840 (June 20, 1989).

[6] 61 FR 4332 (Feb. 5, 1996) (OCC).

[7] *See* 12 CFR 21.11(c)(4); 163.180(d)(3)(iv); 31 CFR 1020.320(a)(2).

[8] 12 CFR 208.62 (Board of Governors of the Federal Reserve); 12 CFR 390.353 (Federal Deposit Insurance Corporation); 12 CFR 748.1 (National Credit Union Administration).

[9] *See* 31 U.S.C. 5318(a)(7), with implementing regulations at 31 CFR 1010.970.

[10] 31 CFR 1010.970(a).

savings association has a novel SAR filing proposal that does not squarely fit within the regulatory requirements but would nonetheless be beneficial from an anti-money laundering regulatory and safety and soundness perspective. As financial technology and innovation continue to develop in the area of monitoring and reporting financial crime and terrorist financing, the OCC will need the express regulatory flexibility to grant exemptive relief when appropriate in this area on a consistent basis. In 2018 the OCC, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, FinCEN, and the National Credit Union Administration issued a statement encouraging banks to take innovative approaches to meet their BSA/anti-money laundering (BSA/AML) compliance obligations.[11] That statement explained that banks are encouraged to consider, evaluate, and, where appropriate, responsibly implement innovative approaches in this area. Today, innovative approaches and technological developments in the areas of SAR monitoring, investigation, and filings may involve, among other things: (i) Automated form population using natural language processing, transaction data, and customer due diligence information; (ii) automated or limited investigation processes depending on the complexity and risk of a particular transaction and appropriate safeguards; and (iii) enhanced monitoring processes using more and better data, optical scanning, artificial intelligence, or machine learning capabilities. Requests for exemptive relief pertaining to innovation or other matters may involve, among other things, expanded investigations and SAR timing issues, SAR disclosures and sharing, continued SAR filings for ongoing activity, outsourcing of SAR processes, the role of agents of national banks and federal savings associations, the use of shared utilities and shared data, and the use and sharing of de-identified data. OCC expects that new technologies will continue to prompt additional innovative approaches related to SAR filing and monitoring.

III. The Proposal

The proposed rule would allow the OCC to issue exemptions from the requirements of its SAR regulations. Specifically, the proposed rule would add a provision to 12 CFR 21.11 and 12 CFR 163.180 that would provide that the OCC may exempt a national bank or federal savings association from the requirements of those sections.

As discussed above, the OCC's SAR regulations contains some requirements that are not included in FinCEN's SAR regulation. For exemption requests involving these OCC additional SAR requirements, a national bank or federal savings association would only need to seek an exemption from the OCC. The OCC believes that the proposed process is consistent with the purposes of the BSA and with safe and sound banking. For exemption requests from the requirements of the OCC's SAR regulations that would also require an exemption from FinCEN's SAR regulation, for example, exemption requests related to SAR filings required by 12 CFR 21.11(c)(4), or related to SAR timing requirements in 12 CFR 21.11(d), or related to SAR confidentiality in 12 CFR 21.11(k), a national bank would need to seek an exemption from both the OCC and FinCEN.

Under the proposed rule, a national bank requesting an exemption from the requirements of 12 CFR 21.11, including exemptions related to SAR filings solely required by paragraphs (c)(1) through (3), must submit a request in writing to the OCC. In reviewing such requests, the OCC would consider whether the exemption is consistent with safe and sound banking, and any other appropriate factors, such as any outstanding supervisory concerns related to BSA/AML, including informal and formal enforcement actions.

A national bank or federal savings association requesting an exemption from the requirements of the OCC's SAR regulations that would also require an exemption from FinCEN's SAR regulation, for example, an exemption request related to SAR filings under 12 CFR 21.11(c)(4) for national banks, would have to submit a request in writing to both the OCC and to FinCEN for approval. Upon receiving a written request from a national bank or federal savings association, the OCC would consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, with safe and sound banking, and any other appropriate factors, such as any outstanding supervisory concerns related to BSA/AML, including informal and formal enforcement actions. With respect to requests for exemption from the requirements of the OCC's SAR regulations that would also require an exemption from FinCEN's SAR regulation, the requestor would have to obtain exemptions from both agencies.

The OCC also may notify the other federal banking agencies and consider their comments before granting any exemption. Such exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions. In addition, the proposed rule provides that the OCC may grant an exemption for a specified time period.

Under the proposed rule, the OCC could also revoke previously granted exemptions if circumstances change related to the factors set out above (*e.g.,* consistency with the BSA and safety and soundness) or any imposed conditions. The OCC invites comments on the proposed rule, including whether any additional detail relating to the procedures that would be followed in considering, granting, or revoking exemptions is necessary. The OCC welcomes comments on any aspect of the proposed rule, in particular, with regard to whether additional or different factors or standards should be applied in the determination whether to grant an exemption request, as well as the form and manner of the OCC's response to an exemption request.

IV. Administrative Law Matters

A. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[12] requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Has the OCC organized the material to suit your needs? If not, how could the OCC present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the OCC incorporate to make the regulation easier to understand?

[11] Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at *https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-130a.pdf.*

[12] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999).

B. Paperwork Reduction Act Analysis

Certain provisions of the proposal contain ''collection of information'' requirements 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, 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 OCC reviewed the proposed rulemaking and determined that it revises information collection requirements previously approved by OMB under OMB Control No. 1557–0180. 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 § 1320.11 of the OMB's implementing regulations (5 CFR part 1320).

Current Actions. The proposal would revise 12 CFR 21.11 and 12 CFR 163.180 to allow national banks and federal savings associations to submit written requests for exemptions from the requirements of the OCC's SAR regulations. The burden estimates below are based on the estimated number of banks and savings associations that might request such exemptions each year and the estimated number of hours required to submit such a request. National banks and federal savings associations may submit written requests for exemptions from the requirements of the OCC's SAR regulations. 12 CFR 21.11(m) and 163.180(f).

Title of Information Collection: Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program.

Frequency: Event generated.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 5.

Total estimated annual burden: 250 hours.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this document that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Board Desk Officer.

C. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total consolidated assets of $600 million or less and trust companies with total consolidated assets of $41.5 million of less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As part of our analysis, we consider whether the proposal would have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC currently supervises approximately 745 small entities.[13] Because the proposal imposes no new mandates, it would have only de minimis costs to OCC-supervised small entities. Therefore, the OCC certifies that the proposal would not have a significant economic impact on a substantial number of small entities.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on insured depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[14] In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[15] The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and administrative compliance requirements for a final rule

E. OCC Unfunded Mandates Reform Act of 1995 Determination

Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, the OCC considers whether the proposed rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million adjusted for inflation (currently $157 million) in any one year. The proposed rule does not impose new mandates. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of $157 million or more annually by state, local, and tribal governments, or by the private sector.

List of Subjects

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations.

[13] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or federal savings association as a small entity.

[14] 12 U.S.C. 4802(a).

[15] 12 U.S.C. 4802(b).

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the OCC proposes to amend 12 CFR parts 21 and 163 as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

■ 1. The authority citation for part 21 is revised to read as follows:

Authority: 12 U.S.C. 1, 93a, 161, 1462a, 1463, 1464, 1818, 1881–1884, and 3401–3422.

■ 2. In § 21.11, add paragraph (m) to read as follows:

§ 21.11 Suspicious Activity Report.

* * * * *

(m) *Exemptions.* (1) The OCC may exempt any national bank from the requirements of this section. A national bank requesting an exemption must submit a request in writing to the OCC. In reviewing such requests, the OCC will consider whether the exemption is consistent with safe and sound banking and may consider other appropriate factors. An exemption shall be applicable only as expressly stated in the exemption, may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions. A national bank requesting an exemption that also requires an exemption from the requirements of FinCEN's SAR regulation must submit a request in writing to both the OCC and FinCEN for approval. In reviewing such requests, the OCC will consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, with safe and sound banking, and any other appropriate factors.

(2) The OCC will provide a written response to the national bank that submitted the exemption request. A national bank that has received an exemption under paragraph (m)(1) of this section may rely on the exemption for a period of time to be communicated by the OCC in its granting of the exemption.

(3) The OCC may extend the period of time or may revoke an exemption granted under paragraph (m)(1) of this section. Exemptions may be revoked at the sole discretion of the OCC. The OCC will provide written notice to the national bank of the OCC's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the national bank to submit a response to the OCC. The OCC will consider the response prior to deciding whether to revoke an exemption and will notify the national bank of the OCC's decision to revoke an exemption in writing.

(4) With respect to requests for exemption that will also require an exemption from the requirements of FinCEN's SAR regulation, upon receiving approval from both the OCC and FinCEN, the requestor shall be relieved of its obligations under this section to the extent stated in such approvals.

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

■ 3. The authority citation for part 163 is revised to read as follows:

Authority: 12 U.S.C. 161, 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.,* 5412(b)(2)(B); 42 U.S.C. 4106.

■ 2. In § 163.180, add paragraph (f) to read as follows:

§ 163.180 Suspicious Activity Reports and other reports and statements.

* * * * *

(f) *Exemptions.* (1) The OCC may exempt any savings association or service corporation from the requirements of this section. A savings association or service corporation requesting an exemption from the provisions of this section, must submit a request in writing to the OCC. In reviewing such requests, the OCC will consider whether the exemption is consistent with safe and sound banking, and may consider other appropriate factors. An exemption shall be applicable only as expressly stated in the exemption, may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions. A federal savings association requesting an exemption that also requires an exemption from the requirements of FinCEN's SAR regulation must submit a request in writing to both the OCC and FinCEN for approval. In reviewing such requests, the OCC will consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, with safe and sound banking, and any other appropriate factors.

(2) The OCC will provide a written response to the savings association or service corporation that submitted the exemption request. A savings association or service corporation that has received an exemption under paragraph (f)(1) of this section may rely on the exemption for a period of time to be communicated by the OCC in its granting of the exemption.

(3) The OCC may extend the period of time or may revoke an exemption granted under paragraph (f)(1) of this section. Exemptions may be revoked at the sole discretion of the OCC. The OCC will provide written notice to the savings association or service corporation of the OCC's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the savings association or service corporation to submit a response to the OCC. The OCC will consider the response prior to deciding whether to revoke an exemption and will notify the savings association or service corporation of the OCC's decision to revoke an exemption in writing.

(4) With respect to requests for exemption that will also require an exemption from the requirements of FinCEN's SAR regulation, upon receiving approval from both the OCC and FinCEN, the requestor shall be relieved of its obligations under this section to the extent stated in such approvals.

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2021–00034 Filed 1–21–21; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R–1738]

RIN 7100–AG08

Membership of State Banking Institutions in the Federal Reserve System; Reports of Suspicious Activities Under Bank Secrecy Act

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Board is inviting comment on a proposed rule that would modify the requirements to file Suspicious Activity Reports for state member banks, Edge and agreement corporations, U.S. offices of foreign banking organizations supervised by the Federal Reserve, and bank holding companies and their nonbank subsidiaries. Specifically, the proposed rule would amend the Board's Suspicious Activity Report regulations to provide for the issuance of exemptions from the requirements of those regulations, in full or in part. The proposed rule is intended, among other things, to facilitate supervised

institutions in meeting Bank Secrecy Act requirements more efficiently and effectively, including through development of innovative solutions.

DATES: Comments must be received by February 22, 2021.

ADDRESSES: You may submit comments, identified by Docket No. R–1738 and RIN 7100–AG08, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Jason Gonzalez, Assistant General Counsel, (202) 452–3725, or Bernard Kim, Senior Counsel, (202) 452–3083, Legal Division; or Suzanne Williams, Deputy Associate Director, (202) 452–3513, or Koko Ives, Manager, (202) 973–6163, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to the Board's Regulations H, K, and Y, state member banks, Edge and agreement corporations, U.S. offices of foreign banking organizations supervised by the Federal Reserve, and bank holding companies and their nonbank subsidiaries must file Suspicious Activity Reports (SARs) to report known or suspected violations of U.S. law.[1] The proposed rule would amend the Board's SAR regulations to expressly provide for exemptions from the regulations' SAR requirements, in full or in part and subject to the Board's approval.

II. Background

The Board, along with the other federal banking agencies, is charged with safeguarding the safety and soundness of its supervised institutions. Pursuant to its safety-and-soundness authority and enabling statutes, the Board has long required a member bank, a bank holding company and its nonbank subsidiaries, an Edge Act or Agreement corporation, or a U.S. branch or agency of a foreign bank to refer potential violations of law arising from transactions that flow through those institutions to relevant law enforcement authorities, because financial crimes can pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the public confidence in the financial services industry.[2]

In 1992, Congress passed the Annunzio-Wylie Anti-Money Laundering Act, which redesigned the criminal referral process applicable to Board-supervised entities and made the reporting of certain suspicious transactions a requirement of the Bank Secrecy Act (BSA).[3] The Act permitted the Department of the Treasury to require financial institutions to ''report any suspicious transaction relevant to a possible violation of law or regulation.'' [4] Thereafter, the Department of the Treasury, in consultation with the federal banking agencies and law enforcement, developed the modern SAR form and reporting process, which standardized the reporting forms, eliminated duplicate filings, and created a centralized database that could be accessed by multiple law enforcement and regulatory agencies.

To implement this new reporting system, the Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, issued its implementing SAR regulations in 1996. The regulations require financial institutions subject to the requirements of the BSA to, among other things, specifically address the reporting of money laundering transactions and transactions designed to evade the reporting requirements of the BSA.[5]

To further implement this new reporting process and reduce unnecessary reporting burdens, the Board and the other federal banking agencies contemporaneously amended their criminal referral form regulations to incorporate the new SAR form and reporting database, align their regulatory reporting requirements with FinCEN's BSA reporting requirements, and further refine the reporting processes.[6]

As a result of this redesign and FinCEN's implementing regulations, relevant institutions supervised by the Board are currently required to file SARs under both the Board's and FinCEN's SAR regulations. These regulations are not identical but are substantially similar with regard to the specified BSA reporting obligations required by FinCEN, in that they both require banks, among other things, to file SARs relating to money laundering and transactions designed to evade BSA reporting requirements, as well as maintain the confidentiality of a SAR in most circumstances. However, the Board's SAR regulations cover a slightly broader range of transactions, for example, by requiring SARs to be filed for any known or suspected instance of insider abuse in any amount, and further requiring the prompt notification to the institution's board of directors when a SAR has been filed.

The Secretary of the Treasury has statutory authority to grant exemptions from the requirements of the BSA, which includes FinCEN's SAR requirements.[7] The regulation implementing this exemption authority provides: [8]

> The Secretary [of the Treasury], in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this chapter. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.

[1] 12 CFR 208.62; 12 CFR 211.5(k); 12 CFR 211.24(f); 12 CFR 225.4(f). See Board, Supervision & Regulation Letter (SR) 10–8, ''Suspicious Activity Report Filing Requirements for Banking Organizations Supervised by the Federal Reserve'' (Apr. 27, 2010).

[2] See generally 58 FR 47206 (Sept. 3, 1993) (codifying the Board's criminal referral procedures); see also SR 88–9, ''New Criminal Referral Form and Updated Criminal Referral Procedures'' (Mar. 18, 1988).

[3] Public Law 102–550, 106 Stat. 3672 (1992).

[4] 31 U.S.C. 5318(g)(1).

[5] 61 FR 4326 (Feb. 5, 1996).

[6] 61 FR 4338 (Feb. 5, 1996).

[7] See 31 U.S.C. 5318(a)(7).

[8] 31 CFR 1010.970(a).

The Secretary of the Treasury has delegated this exemption authority to FinCEN. The purpose of the Board's proposed rule, which would largely parallel FinCEN's general exemptive authority, would be to facilitate the Board's granting of relief to a bank seeking an exemption from the requirements of the Board's SAR regulations.

The decision to grant or deny such an exemption would be made from a safety-and-soundness and anti-money laundering regulatory perspective. In particular, the Board's view is that these exemptions would facilitate supervised institutions to meet BSA requirements more efficiently and effectively, including through development of innovative solutions. Financial technology and innovation continue to develop in the area of monitoring and reporting financial crime and terrorist financing, and the Board recognizes the increasing importance of regulatory flexibility to such efforts. Recently, the Board, along with the other federal banking agencies and FinCEN, issued a statement encouraging banks to take innovative approaches to meet their BSA/anti-money laundering (BSA/AML) compliance obligations.[9] The statement explained that banks are encouraged to consider, evaluate, and where appropriate, responsibly implement innovative approaches in this area.

Today, innovative approaches and technological developments in the area of SAR monitoring, investigation, and filings may involve, among other things: (i) Automated form population using natural language processing, transaction data, and customer due diligence information; (ii) automated or limited investigation processes depending on the complexity and risk of a particular transaction and appropriate safeguards; and (iii) enhanced monitoring processes using more and better data, optical scanning, artificial intelligence, or machine learning capabilities. Accordingly, exemptive relief may be helpful to foster innovation in this area, as the Board expects that new technologies will continue to prompt additional innovative approaches related to SAR filing and monitoring.

It is important to recognize that any Board-issued exemptions from its SAR regulations would not relieve the supervised institution from the independent obligation to comply with FinCEN's SAR regulations, if applicable. To the extent that the supervised institution is subject to requirements imposed by both the Board's and FinCEN's SAR regulations, the institution would need to acquire an exemption from both the Board and FinCEN. The Board expects to coordinate with FinCEN when handling such parallel exemption requests, and accordingly, the Board's proposed rule would require FinCEN's concurrence with regard to such exemptions. As explained above, however, the Board's SAR regulation imposes additional requirements not included in FinCEN's regulation. To the extent the supervised institution is subject to a requirement imposed by the Board's SAR regulations alone (and not a parallel FinCEN requirement), the proposed rule would allow the Board to exempt the institution from that requirement without FinCEN's concurrence.

[9] Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20181203a1.pdf.*

III. The Proposal

The proposed rule would provide for the issuance of exemptions from the requirements, in full or in part, of the Board's SAR regulations. Upon receiving a written request from a Board-supervised institution, the Board would determine whether the exemption is consistent with safe and sound banking. The Board would also seek FinCEN's determination whether the exemption is consistent with the purposes of the BSA, as applicable, where an exemption request involves an exemption from the requirements to file a SAR required by FinCEN regulations implementing the BSA.

The proposed rule would require the Board to seek FinCEN's concurrence regarding any exemptions that involve SAR provisions relating to potential money laundering or violations of the BSA or other unusual activity covered by FinCEN's SAR regulation. The proposed rule would allow the Board to consult with FinCEN regarding other exemption requests. The Board may also consult with the other state and federal banking agencies before granting any exemption.

An approved exemption under the proposed rule may apply to only certain parts of the SAR requirements. It may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions. In addition, the proposed rule provides that the Board may grant an exemption for a specified time period or extend the time period of a previously granted exemption. Finally, the proposed rule provides that the Board may, in its sole discretion, revoke previously granted exemptions.

The changes made by the proposed rule would add a new paragraph (l) to § 208.62 of Regulation H (12 CFR 208.62), which concerns the SAR filing obligations of member banks. Sections 211.5(k) and 211.24(f) of Regulation K (12 CFR 211.5(k) and 211.24(f)) and § 225.4(f) of Regulation Y (12 CFR 225.4(f)) make § 208.62 of Regulation H applicable to Edge and Agreement corporations, the U.S. branches and agencies of foreign banks (except a Federal branch or Federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation), a representative office of a foreign bank, and bank holding companies and their nonbank subsidiaries, respectively. This means that the changes applicable to member banks will also be applicable to the suspicious activity reporting responsibilities of these other domestic and foreign banking organizations supervised by the Federal Reserve, including bank holding companies, Edge corporations, and the U.S. branches and agencies of foreign banks.

The Board welcomes comments on any aspect of the proposed rule, in particular, with regard to whether additional or different factors or standards should be applied in the determination whether to grant an exemption request, as well as the form and manner of the Board's response to an exemption request.

IV. Administrative Law Matters

A. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

B. Paperwork Reduction Act Analysis

Certain provisions of the proposed rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board 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 Board reviewed the proposed rule under the authority delegated to the Board by OMB. The proposed rule contains reporting requirements subject to the PRA. To

implement these requirements, the Board is revising the Suspicious Activity Report (FR 2230; OMB No. 7100–0212),

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–5806; or email *oira_submission@omb.eop.gov,* Attention, Federal Reserve Desk Officer.

Proposed Information Collection

Title of information collection: Suspicious Activity Report.

Agency form number: FR 2230.

OMB control number: 7100–0212.

Frequency: On occasion.

Affected public: Businesses or other for-profit.

Respondents: State member banks, bank holding companies and their nonbank subsidiaries, Edge and agreement corporations, and the U.S. branches and agencies, representative offices, and nonbank subsidiaries of foreign banks supervised by the Board.

Description of information collection: Certain institutions supervised by the Board are required, pursuant to the Bank Secrecy Act (BSA) and the Board's regulations, to file a SAR to report known or suspected violations of federal law or a suspicious transaction related to a money laundering activity or a violation of the BSA. Institutions file a SAR electronically through a secure network created and maintained by the administrator of the BSA, the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

Current actions: The proposed rule would provide for the issuance of exemptions from the requirements, in full or in part, of the Board's SAR regulations. In section 208.62(*l*), upon receiving a written request from a Board-supervised institution, the Board would determine whether the exemption is consistent with safe and sound banking. The written request for exemption would be a new reporting requirement under the PRA. The Board estimates that the average hours per response would be 8 hours.

In addition, because FinCEN already accounts for the reporting burden for all respondents (including Board-supervised institutions) to file a SAR (see OMB Control No. 1506–0065) the Board would remove this same reporting burden from the FR 2230.[10]

Legal authorization and confidentiality: The FR 2230 is authorized pursuant to the Federal Reserve Act (12 U.S.C. 248(a)(1), 602, and 625), Federal Deposit Insurance Act (12 U.S.C. 1818(s)), Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)), and International Banking Act of 1978 (12 U.S.C. 3105(c)(2) and 3106(a)). The FR 2230 is mandatory.

SARs are confidential and exempt from Freedom of Information Act (FOIA) disclosure by 31 U.S.C. 5319, which specifically provides that SARs ''are exempt from disclosure under section 552 of title 5'' and FOIA exemption 3 (5 U.S.C. 552(b)(3)) (matters ''specifically exempted from disclosure by statute'').

Estimated number of respondents: Reporting Section 208.62(l)–3.

Estimated average hours per response: Reporting Section 208.62(l)–8.

Current estimated annual burden hours: 439,520.

Estimated annual burden hours due to proposed revisions: Exemption request, 24; removal of SAR filing, (439,520).

Proposed estimated annual burden hours: 24.

C. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), generally requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities based on size standards of the Small Business Administration (SBA) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives. The Board has considered the potential impact of the proposed rule on small entities in accordance with section 603 of the RFA.[11] Under regulations issued by the SBA, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $600 million or less and trust companies with annual receipts of $41.5 million or less.[12] As of March 2020, there were approximately 2,925 small bank holding companies, 132 small savings and loan holding companies, and 472 small state member banks. As of March 2020, the Board does not supervise any small trust companies.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis may be conducted after any comments received during the public comment period have been considered. The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

As discussed above, the purpose of the Board's proposed rule is to facilitate

[10] Section 208.62(e) encourages respondents to file SARs with state and local law enforcement agencies. In practice, these agencies have access to SARs through FinCEN's database, making it unnecessary for respondents to file SARs directly with these agencies. Therefore, the Board assumes de minimus burden for this requirement.

[11] 5 U.S.C. 603.

[12] *See* 13 CFR 121.201.

the Board's granting of relief to a bank seeking relief from the requirements of the Board's SAR regulations, when such relief would be beneficial from a safety-and-soundness and anti-money laundering regulatory perspective. The proposed rule would be issued pursuant to the Board's safety-and-soundness authority over supervised institutions. The proposed rule will apply to small bank holding companies and their nonbank subsidiaries and small state member banks as well as Edge and agreement corporations, and U.S. offices of foreign banking organizations supervised by the Federal Reserve. The Board does not expect that the proposal would impose a significant cost on small banking organizations due to compliance, recordkeeping, and reporting updates from this proposal. The Board does not believe that the proposal would result in any significant economic impact on banking organizations as there are no projected recordkeeping, reporting, or other compliance requirements associated with the proposal. Moreover, the proposal does not impose any new requirements on banking organization, as applying for an exemption under the proposal would be entirely voluntary. In addition, the Board is not aware of any federal rules that duplicate, overlap, or conflict with the proposed rule. For these reasons, the Board believes that the proposed rule will not have a significant economic impact on a substantial number of small entities supervised by the Board, and believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on insured depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[13] In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[14] The proposed rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

However, the agencies invite comments that further will inform the agencies' consideration of RCDRIA.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Consumer protection, Crime, Currency, Federal Reserve System, Flood insurance, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. In § 208.62, add a new paragraph (l) to read as follows:

§ 208.62 Suspicious activity reports.

* * * * *

(*l*) *Exemptions.*

(1)(i) The Board may exempt any member bank from the requirements of this section. Upon receiving a written request from a member bank, the Board will consider whether the exemption is consistent with safe and sound banking and may consider other appropriate factors. The Board also would seek FinCEN's determination whether the exemption is consistent with the purposes of the Bank Secrecy Act, if applicable. The exemption shall be applicable only as expressly stated in the exemption, may be conditional or unconditional, may apply to particular persons or classes of persons, and may apply to transactions or classes of transactions.

(ii) The Board will seek FinCEN's concurrence with regard to any exemption request that would also require an exemption from FinCEN's SAR regulations, and may consult with FinCEN regarding other exemption requests. The Board also may consult with the other state and federal banking agencies and consider comments before granting any exemption.

(2) The Board will provide a written response to the member bank that submitted the exemption request after considering whether the exemption is consistent with safe and sound banking, consulting with the appropriate agencies, and seeking concurrence when appropriate. A member bank that has received an exemption under paragraph (1) of this section may rely on the exemption for a period of time to be communicated by the Board in its granting of the exemption, which may be indefinite.

(3) The Board may extend the period of time or may revoke an exemption granted under paragraph (1) of this section. Exemptions may be revoked at the sole discretion of the Board. The Board will provide written notice to the member bank of the Board's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the member bank to submit a response to the Board. The Board will consider the response prior to deciding whether to revoke an exemption, and will notify the member bank of the Board's final decision to revoke an exemption in writing.

By order of Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–00033 Filed 1–21–21; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 353

RIN 3064–AF56

Exemptions to Suspicious Activity Report Requirements

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is inviting comment on a proposed rule that would modify

[13] 12 U.S.C. 4802(a).

[14] 12 U.S.C. 4802(b).

the requirements for FDIC-supervised institutions to file Suspicious Activity Reports (SARs). The proposed rule would amend the FDIC's SAR regulation to allow the FDIC to issue exemptions from the SAR requirements. The proposed rule would make it possible for the FDIC to grant relief to FDIC-supervised institutions that develop innovative solutions to meet Bank Secrecy Act (BSA) requirements more efficiently and effectively.

DATES: Comments are due on or before February 22, 2021. Comments on the Paperwork Reduction Act burden estimates are due on or before March 23, 2021.

ADDRESSES: You may submit comments, identified by RIN 3064–AF56, by any of the following methods:

- *FDIC Website: https://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency website.
- *FDIC Email: Comments@fdic.gov.* Include RIN 3064–AF56 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Lisa Arquette, Associate Director, (202) 898–8633, *larquette@fdic.gov,* Division of Risk Management Supervision; John Dorsey, Acting Supervisory Counsel, (202) 898–3807, *jdorsey@fdic.gov,* Legal Division; or Constantine Lizas, Counsel, (202) 898–6925, *clizas@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of the proposed rule is to allow the FDIC to grant SAR filing exemptions, in conjunction with the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN), to FDIC-supervised institutions that develop innovative solutions to meet BSA requirements more efficiently and effectively. The FDIC is proposing this rule as a proactive measure to address the likelihood that FDIC-supervised institutions will leverage existing or future technologies to report information concerning suspicious activity in a different manner or time frame or to share SAR-related information. This change would more closely align the FDIC's regulation with FinCEN's regulation. FinCEN, unlike the FDIC, has broad statutory authority to issue exemptions from the SAR filing requirements. Because the FDIC's SAR regulations do not currently contain any provision by which the FDIC can issue case-by-case exemptions, a situation could arise in which FinCEN grants an exemption from the SAR filing requirements to an FDIC-supervised institution, but the institution would still need to file a SAR if the circumstance fell within the FDIC's SAR rule. The proposed rule would allow the FDIC to grant exemptions from SAR filing requirements in conjunction with FinCEN to reduce potential regulatory burden when a request involves the SAR filing requirements of both FinCEN and the FDIC.

II. Background

The FDIC has long required its supervised institutions to report potential violations of law arising from transactions that flow through those institutions. From 1986 to 1996, FDIC-supervised institutions filed criminal referral forms with the FDIC, Federal Bureau of Investigation, and the local U.S. Attorney's office.[1] The FDIC required reporting through criminal referral forms to facilitate the reporting of potential violations to law enforcement.

In 1992, Congress passed the Annunzio-Wylie Anti-Money Laundering Act, which redesigned the criminal referral process applicable to FDIC-supervised institutions and made the reporting of certain suspicious transactions a requirement of the BSA.[2] The Annunzio-Wylie Anti-Money Laundering Act permitted the Department of the Treasury to require financial institutions, including FDIC-supervised institutions, to ''report any suspicious transaction relevant to a possible violation of law or regulation.'' [3] Thereafter, the Department of the Treasury, in consultation with the FDIC, the other federal banking agencies, and law enforcement, developed the modern SAR form and reporting process, which standardized the reporting forms and created a centralized database that could be accessed by multiple law enforcement and regulatory agencies.

To implement this new reporting system, FinCEN implemented its SAR regulation in 1996 [4] for financial institutions subject to BSA requirements to address, among other things, the reporting of money laundering transactions and transactions designed to evade the reporting requirements of the BSA.[5] To further implement this new reporting process and reduce unnecessary reporting burdens, the FDIC and the other federal banking agencies contemporaneously amended their criminal referral form regulations to incorporate the new SAR form and reporting database, align their regulatory reporting requirements with FinCEN's reporting requirements, and further refine the reporting processes.[6]

As a result of this redesign and FinCEN's implementing regulation, FDIC-supervised institutions are currently required under both FDIC and FinCEN regulations to file SARs. These regulations are not identical but are substantially similar. Both SAR regulations require, among other things, FDIC-supervised institutions to file SARs relating to money laundering and transactions that are designed to evade the reporting requirements of the BSA, as well as maintain the confidentiality of a SAR in most circumstances.[7] However, the FDIC's SAR regulation covers a slightly broader range of transactions, for example, by requiring SARs to be filed for any known or suspected instance of insider abuse in any amount, and further requiring the

[1] The FDIC first codified this requirement in 1986 at 12 CFR part 353 (1986), which required FDIC insured state non-member banks to report ''apparent violation[s]'' of federal criminal law. 51 FR 16485, 16486 (May 5, 1986).

[2] Public Law 102–550, 106 Stat. 3672 (Oct. 28, 1992).

[3] 31 U.S.C. 5318(g)(1). The quoted text is from section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, which was originally codified at 31 U.S.C. 5314(g). The text was moved as part of the Violent Crime Control and Law Enforcement Act of 1994.

[4] FinCEN is the Administrator of the Bank Secrecy Act.

[5] 61 FR 4326 (Feb. 5, 1996). Prior to the adoption of FinCEN's SAR regulation in 1996 and the accompanying revisions to the FDIC's regulation, the FDIC's criminal referral regulation had no specific provision requiring the reporting of money laundering transactions. *See* footnote 1. However, the FDIC's criminal referral regulation prior to the SAR regulation broadly encompassed money laundering and structuring transactions. *See* 58 FR 28757, 28772 (May 17, 1993).

[6] 61 FR 6095 (Feb. 16, 1996) (FDIC); 61 FR 6100 (Feb. 16, 1996) (OTS); 61 FR 4326 (Feb. 5, 1996) (FinCEN).

[7] *See* 12 CFR part 353; 31 CFR 1020.320(a)(2).

prompt notification to the institution's board of directors when a SAR has been filed.

FinCEN has general authority to grant exemptions from the BSA's requirements, which includes granting exemptions under its SAR reporting regulation.[8] FinCEN's regulation provides that ''[t]he Secretary [of Treasury], in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of [the BSA]. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.'' The Secretary of Treasury delegated this exemption authority to FinCEN. In contrast, the FDIC's SAR regulations contain a discrete set of filing exemptions pertaining to physical crimes (robberies and burglaries), and lost, missing, counterfeit, or stolen securities.

This disparity in exemptions makes it more difficult for the FDIC to grant relief if an FDIC-supervised institution has a novel SAR filing proposal that does not squarely fit within the FDIC's regulatory requirements, but would nonetheless be consistent with safe and sound banking and with the BSA. As financial technology and innovation continue to develop in the area of monitoring and reporting financial crime and terrorist financing, the FDIC will need the express regulatory flexibility to grant exemptive relief when appropriate in this area.

Moreover, in 2018, the FDIC, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Office of the Comptroller of the Currency, and FinCEN issued a statement encouraging banks to take innovative approaches to meet their BSA/Anti-Money Laundering compliance obligations.[9] The statement explained that banks [10] are encouraged to consider, evaluate, and where appropriate, responsibly implement innovative approaches in this area. Today, innovative approaches and technological developments in the areas of SAR monitoring, investigation, and filing may involve, among other things: (i) Automated form population using natural language processing, transaction data, and customer due diligence information; (ii) automated or limited investigation processes depending on the complexity and risk of a particular transaction and appropriate safeguards; and (iii) enhanced monitoring processes using more and better data, optical scanning, artificial intelligence, or machine learning capabilities. Requests for exemptive relief pertaining to innovation or other matters may involve, among other things, expanded investigations and SAR timing issues, SAR disclosures and sharing, continued SAR filings for ongoing activity, SAR outsourcing of responsibilities and practices, the role of agents of FDIC-supervised institutions, the use of shared utilities and shared data, and the use and sharing of de-identified data (commonly referred to as anonymized data). The FDIC expects that new technologies will continue to prompt additional innovative approaches related to suspicious activity monitoring and SAR filing.

If the FDIC adopts the proposed rule and uses it to grant exemptions, the exemptions would not relieve FDIC-supervised institutions from the obligation to comply with FinCEN's SAR regulation when applicable. To the extent an exemption request from an FDIC-supervised institution involves both the FDIC's SAR regulation and FinCEN's SAR regulation, the FDIC-supervised institution would need an exemption from both the FDIC and FinCEN. The FDIC expects to coordinate with FinCEN when handling parallel exemptions. As explained above, however, the FDIC's SAR regulation imposes additional requirements not included in FinCEN's SAR regulation. To the extent an exemption request is subject to a requirement imposed by the FDIC's SAR regulation alone (and not a parallel FinCEN requirement), the proposed rule would allow the FDIC to exempt a supervised institution from that requirement.

III. Proposed Regulation Changes

The proposed rule would add three paragraphs to 12 CFR 353.3(d) of the FDIC Rules and Regulations that would permit the FDIC to exempt a supervised institution from the requirements, in full or in part, of 12 CFR 353.3. Under the proposed rule, the FDIC in evaluating an exemption request would determine whether the request is consistent with safe and sound banking, and may consider other appropriate factors. The FDIC would also seek FinCEN's determination whether the exemption request is consistent with the purposes of the BSA, as applicable, where an exemption request involves the filing of a SAR for potential money laundering, violations of the BSA, or other unusual activity covered by FinCEN's SAR regulation. When a request involves the SAR filing requirements of both FinCEN and the FDIC, the proposed rule would require the FDIC to seek FinCEN's concurrence. In addition, the proposed rule provides that the FDIC may grant an exemption for a specified time period. The supervised institution would then be able to rely on the exemption for a period of time as determined and communicated by the FDIC. Under the proposed rule, the FDIC could also extend or revoke previously granted exemptions if circumstances change related to the factors set out above (consistent with the BSA and safety and soundness), or any imposed conditions.

A. Part 353.3(d) Exemptions

Section 353.3(d) sets forth exemptions from the FDIC's SAR regulation. Currently, Section 353.3(d)(1) exempts FDIC-supervised institutions from filing a SAR for a committed or attempted robbery or burglary that is reported to the appropriate law enforcement authorities. Section 353.3(d)(2) exempts an FDIC-supervised institution from filing a SAR for lost, missing, counterfeit, or stolen securities if the institution files a report pursuant to the reporting requirements of 17 CFR 240.17f–1. The proposed rule would add three paragraphs to § 353.3(d).

B. Part 353.3(d)(3)

The proposed paragraph (d)(3) would permit the FDIC to exempt any FDIC-supervised institution from the requirements of 12 CFR 353.3. Upon receiving a written request from an FDIC-supervised institution, the FDIC would determine whether the exemption is consistent with safe and sound banking. The FDIC would also seek FinCEN's determination whether the exemption is consistent with the purposes of the BSA, as applicable, where an exemption request also requires an exemption from FinCEN's SAR regulation. The exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.

The proposed paragraph (d)(3) would require the FDIC to seek FinCEN's concurrence regarding an exemption request that also requires an exemption from FinCEN's SAR regulation. The proposed paragraph (d)(3) would permit the FDIC to consult with FinCEN regarding other exemption requests. The FDIC may also consult with the other

[8] *See* 31 U.S.C. 5318(a)(7), with implementing regulations at 31 CFR 1010.970.

[9] *See https://www.fdic.gov/news/news/press/2018/pr18091a.pdf.*

[10] Under the Bank Secrecy Act, the term ''bank'' is defined in 31 CFR 1010.100(d) and includes each agent, agency, branch, or office within the United States of banks, savings associations, credit unions, and foreign banks.

state and federal banking agencies before granting any exemption.

C. Part 353.3(d)(4)

The proposed paragraph (d)(4) would require that, after the FDIC has received FinCEN's concurrence and consulted with appropriate agencies, the FDIC provide a written response to the FDIC-supervised institution that submitted the exemption request. An FDIC-supervised institution that has received an exemption under paragraph (d)(3) may rely on the exemption for a period of time to be communicated by the FDIC in its granting of the exemption, which may be indefinite.

D. Part 353.3(d)(5)

The proposed paragraph (d)(5) would permit the FDIC to revoke or extend the period of time for an exemption granted under paragraph (d)(3). Under the proposed paragraph (d)(5), the FDIC would have discretion to revoke exemptions. The proposed paragraph (d)(5) would require the FDIC to provide written notice to the FDIC-supervised institution of the FDIC's intention to revoke an exemption. The proposed paragraph (d)(5) would require the written notice to include the basis for the revocation and provide the FDIC-supervised institution an opportunity to respond. The proposed paragraph (d)(5) would require the FDIC to consider the institution's response before deciding to revoke an exemption. The proposed paragraph (d)(5) would require the FDIC to notify, in writing, the FDIC-supervised institution of the FDIC's final decision to revoke an exemption.

IV. Summary

If the proposal is finalized, 12 CFR 353.3(d) would be amended to add paragraphs (d)(3) through (5), and would apply to all FDIC-supervised institutions. These initiatives would permit the FDIC to grant SAR exemptions to FDIC-supervised institutions to promote innovation, reduce burden, and meet BSA requirements more efficiently and effectively.

V. Expected Effects

As explained previously, the proposed rule would amend 12 CFR 353.3(d) to add paragraphs (d)(3) through (5), and would apply to all FDIC-supervised institutions. As of June 30, 2020, the FDIC supervised 3,270 institutions.[11] The proposal would permit the FDIC to grant relief to FDIC-supervised institutions that leverage existing or future technologies to gather and submit the information contained in SARs to the appropriate law enforcement authorities and regulatory agencies in a more efficient and cost effective manner. This change would more closely align the FDIC's regulations with those of FinCEN, which has broad statutory authority to issue exemptions from SAR filing requirements. Because the FDIC's SAR regulations do not currently contain any provision by which the FDIC can issue case-by-case exemptions, a situation could arise in which FinCEN grants an exemption from SAR filing requirements to an FDIC-supervised institution that has developed innovative methods for meeting SAR filing requirements, but the institution would still need to file a SAR. The proposed rule would allow the FDIC to grant exemptions from SAR filing requirements in conjunction with FinCEN to reduce potential regulatory burden.

The FDIC does not have the ability to forecast the number of requests for exemptions that FDIC-supervised institutions will file as a result of this rule, or the number of requests that the FDIC will grant. The proposed rule is likely to pose some increase in compliance costs associated with submitting an exemption request to the FDIC, however the FDIC believes that the costs are likely to be small. The FDIC expects this proposed rule will result in cost savings for FDIC-supervised institutions that obtain exemptions from SAR filing requirements. However, the cost savings are projected to be relatively modest. For example, using the methodology for calculating the cost associated with filing SARs that FinCEN published in May 2020,[12] the FDIC estimates that FDIC-supervised institutions incurred roughly $3.8 million [13] in costs in the second quarter of 2020 related to reviewing alerts, and drafting, writing, submitting, and storing SAR filings and documentation, which amounts to annual estimated costs of $15.2 million for FDIC-supervised institutions in aggregate.

The FDIC estimated the recordkeeping, reporting, and disclosure costs of filing SARs for each FDIC-supervised institution in the second quarter of 2020 using data on SAR filings for each institution in combination with FinCEN's methodology for estimating costs associated with SAR filings.[14] The annualized estimated recordkeeping, reporting, and disclosure costs of filing SARs in the second quarter of 2020 do not represent more than 1.9 percent of annual non-interest expense for any FDIC-supervised institution. Additionally, only one FDIC-supervised institution incurred estimated annualized recordkeeping, reporting, and disclosure costs associated with SAR filing that amounted to more than 5 percent of annual wage and salary expense with the costs equaling 5.2 percent.[15] Therefore, the economic benefit of this proposed rule on FDIC-supervised institutions is likely to be relatively small. Further, this proposed rule would only allow the FDIC to grant exemptions in instances where safety and soundness and Bank Secrecy Act regulatory requirements would not be compromised, so the proposed rule is also not expected to have any broader negative economic impacts.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits to covered entities that the FDIC has not identified?

VI. Alternatives

The FDIC has considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option for covered institutions. As discussed earlier,

[11] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[12] See 85 FR 31598 (May 26, 2020).

[13] This estimate uses the May 2019 75th percentile hourly wage rate for Financial Managers ($73.48), Compliance Officers ($43.70), Financial Clerks ($18.20), and Tellers ($17.49) reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. These wage rates have been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2019 and June 2020 (0.67 percent) and grossed up by 51 percent to account for non-monetary compensation as reported by the June 2020 Employer Costs for Employee Compensation Data. The mix of professions varies depending on the task associated with filing SARs including reviewing alerts, documenting reasons why some alerts do not merit a SAR filing, drafting, writing, and submitting SARs, and storing SARs and supporting documentation. For this calculation the FDIC assumed that the mix of professions involved in each task, the percentage of SAR alerts that result in a SAR filing, and the percentage of SARs that are batch filed or filed discretely, and the percentage of SARs that contain extended content matches what FinCEN reported in its recent estimates of the costs associated with SAR filing requirements (85 FR 31598).

[14] FDIC analysts queried data on SAR filings by institution from a SAR database that FinCEN makes available to regulators and law enforcement agencies.

[15] This estimate uses FinCEN data on the SAR filings of each FDIC-supervised institution, in combination with FinCEN's methodology for estimating costs associated with SAR filings, to estimate the SAR-related costs that each FDIC-supervised institution incurred in the second quarter of 2020. That estimate is then multiplied by four, and compared to each institution's previous four quarters of merger-adjusted noninterest expense and wages and salary expense reported in Call Report filings from September 2019–June 2020.

FinCEN has statutory authority to grant relief from SAR filing requirements to FDIC-supervised institutions, and this proposed rule would amend the FDIC's regulations so that the FDIC may issue exemptions to SAR filing requirements in conjunction with FinCEN. This change could reduce regulatory burden for FDIC-supervised institutions by allowing institutions that develop innovative techniques for meeting BSA requirements to obtain exemptions from SAR filing requirements. The FDIC considered maintaining its regulations in their current form, but chose not to do so because the FDIC believes that doing so would be unnecessarily burdensome and may discourage institutions from developing innovative approaches to meeting BSA requirements.

VII. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking. In particular, the FDIC requests comments on the following questions:

Question 1. *The FDIC invites comments on the proposed exemptions to 12 CFR 353.3.*

Question 2. *The FDIC invites comments on whether any additional detail relating to the procedures that would be followed in considering, granting, or revoking exemptions are necessary.*

Written comments must be received by the FDIC no later than February 22, 2021.

VIII. Administrative Law Matters

A. The Paperwork Reduction Act

Certain provisions of the proposed 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 FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval by FDIC under section 3507(d) of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320) as a new information collection. The proposed rule contains voluntary reporting requirements, or exemption requests, in 12 CFR 353.3(d)(3).

Title of Proposed Information Collection: Exemptions to Suspicious Activity Report Requirements.

OMB Control Number: 3064—[NEW].

Frequency of Response: On Occasion.

Affected Public: Businesses or other for-profit.

Respondents: Any FDIC-supervised institution wishing to obtain an exemption from the Suspicious Activity Report requirements.

Estimated Number of Annual Respondents: 3.

Estimated Burden per Response: 8 hours.

Total estimated annual burden: 24 hours.

To derive these estimates, the FDIC assumed that the FDIC-supervised institutions that file the most SARs will be the most likely to request exemptions from SAR filing requirements. There are ten FDIC-supervised institutions that filed 1,000 or more SARs in the second quarter of 2020. The FDIC expects roughly one-third of those institutions to request an exemption per year, so the FDIC expects 3 annual respondents to this information collection. The FDIC estimates the hourly burden of an exemption request to be 8 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting or recordkeeping requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this preamble. A copy of the comments may also be submitted to the FDIC OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Federal Banking Agency Desk Officer.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[16] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[17] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2020, the FDIC supervised 3,270 institutions,[18] of which 2,492 are considered small entities for the purposes of RFA.[19] Using the methodology for calculating the cost associated with filing SARs that FinCEN published in May 2020,[20] the FDIC estimates that small FDIC-supervised institutions incurred $460,565.08 [21] in

[16] 5 U.S.C. 601, *et seq.*

[17] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[18] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[19] Call Report data, March 2020.

[20] *See* 85 FR 31598.

[21] This estimate uses the May 2019 75th percentile hourly wage rate for Financial Managers ($73.48), Compliance Officers ($43.70), Financial Clerks ($18.20), and Tellers ($17.49) reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. These wage rates have been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2019 and June 2020 (0.67 percent) and grossed up by 51 percent to account for non-monetary compensation as reported by the June 2020 Employer Costs for Employee Compensation Data. The mix of professions varies depending on the task associated with filing SARs including reviewing alerts, documenting reasons why some alerts do not merit a SAR filing, drafting,

costs in the second quarter of 2020 related to reviewing alerts, documenting the reasons why certain alerts do not merit a SAR filing, and drafting, writing, submitting, and storing SAR filings and documentation, which amounts to annual estimated costs of $1,842,260.32 for small FDIC-supervised institutions in aggregate.

The FDIC estimated costs of filing SARs for each FDIC-supervised institution in the second quarter of 2020 using data on SAR filings for each institution in combination with FinCEN's methodology for estimating costs associated with SAR filings.[22] The annualized estimated recordkeeping, reporting, and disclosure costs of filing SARs in the second quarter of 2020 do not represent more than 1.9 percent of annual non-interest expense for any small FDIC-supervised institution. Additionally, only one small FDIC-supervised institution incurred estimated annualized costs associated with SAR filing that amounted to more than 5 percent of annual wage and salary expense with the costs equaling 5.2 percent.[23] While the total estimated costs of filing SARs represent a significant expense for one FDIC-supervised small entity, the costs do not represent a significant amount for all other FDIC-supervised small entities. Thus, the cost savings from this proposal for all other FDIC-supervised small entities will likely not be significant. In addition, the cost savings from receiving a SAR exemption would be at least partially offset by the costs associated with requesting an exemption and the costs associated with developing a method for meeting SAR requirements. Further, this proposed rule would only allow the FDIC to grant exemptions in instances where safety and soundness and BSA regulatory requirements would not be compromised, so the proposed rule is also not expected to have any broader negative economic impacts.

Based on the information above, the FDIC certifies that the rule would not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[24] requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[25] The FDIC, along with the other federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (EGRPRA Report) discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures the FDIC will take to address issues that were identified.[26] By providing the ability to issue exemptions and reduce burdens on FDIC-supervised institutions, this rule complements other actions that the FDIC has taken, separately and with the other federal banking agencies, to further the EGRPRA mandate.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[27] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that the regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of the regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[28] The FDIC invites comments that further will inform its consideration of RCDRIA.

List of Subjects in 12 CFR Part 353

Banks, banking, Crime, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 353 as follows:

PART 353—SUSPICIOUS ACTIVITY REPORTS

■ 1. The authority citation for part 353 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819; 31 U.S.C. 5318.

■ 2. Revise § 353.3 paragraph (d) to read as follows:

§ 353.3 Reports and records.

* * * * *

(d) *Exemptions.* (1) An FDIC-supervised institution need not file a suspicious activity report for a robbery or burglary committed or attempted, that is reported to appropriate law enforcement authorities.

(2) An FDIC-supervised institution need not file a suspicious activity report for lost, missing, counterfeit, or stolen securities if it files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(3) The FDIC may exempt any FDIC-supervised institution from the requirements of this section. Upon receiving a written request from an FDIC-supervised institution, the FDIC will determine whether the exemption is consistent with safe and sound banking and may consider other appropriate factors. The FDIC will also

writing, and submitting SARs, and storing SARs and supporting documentation. For this calculation the FDIC assumed that the mix of professions involved in each task, the percentage of SAR alerts that result in a SAR filing, and the percentage of SARs that are batch filed or filed discretely, and the percentage of SARs that contain extended content matches what FinCEN reported in its recent estimates of the costs associated with SAR filing requirements (85 FR 31598).

[22] FDIC analysts queried data on SAR filings by institution from a SAR database that FinCEN makes available to regulators and law enforcement agencies.

[23] This estimate uses FinCEN data on the SAR filings of each FDIC-supervised institution, in combination with FinCEN's methodology for estimating costs associated with SAR filings, to estimate the SAR-related costs that each FDIC-supervised institution incurred in the second quarter of 2020. That estimate is then multiplied by four, and compared to each institution's previous four quarters of merger-adjusted noninterest expense and wages and salary expense reported in Call Report filings from June 2019 to March 2020.

[24] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[25] Public Law 104–208, 110 Stat. 3009 (1996).

[26] 82 FR 15900 (March 31, 2017).

[27] 12 U.S.C. 4802(a).

[28] *Id.*

seek FinCEN's determination whether the exemption is consistent with the purposes of the BSA, if applicable. The exemption shall be applicable only as expressly stated in the exemption, may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.

The FDIC will seek FinCEN's concurrence with regard to any exemption request that also requires an exemption from FinCEN's SAR regulation, and may consult with FinCEN regarding other exemption requests. The FDIC also may consult with the other state and federal banking agencies before granting any exemption.

(4) The FDIC will provide a written response to the FDIC-supervised institution that submitted the exemption request after considering whether the exemption is consistent with safe and sound banking, consulting with the appropriate agencies, and seeking concurrence when appropriate. An FDIC-supervised institution that has received an exemption under paragraph (d)(3) of this section may rely on the exemption for a period of time to be communicated by the FDIC in its granting of the exemption, which may be indefinite.

(5) The FDIC may extend the period of time or may revoke an exemption granted under paragraph (d)(3) of this section. Exemptions may be revoked at the sole discretion of the FDIC. The FDIC will provide written notice to the FDIC-supervised institution of the FDIC's intention to revoke an exemption. The notice will include the basis for the revocation and will provide an opportunity for the FDIC-supervised institution to submit a response to the FDIC. The FDIC will consider the response prior to deciding whether or not to revoke an exemption, and will notify the FDIC-supervised institution of the FDIC's final decision to revoke an exemption in writing.

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–00037 Filed 1–21–21; 8:45 am]

BILLING CODE 6714–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

RIN 3133–AF25

Bank Secrecy Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) is inviting comment on a proposed rule that would modify the requirements for federally insured credit unions (FICUs) to file Suspicious Activity Reports (SARs). The proposed rule would amend the NCUA's SARs regulation to allow the Board to issue exemptions from the requirements of that regulation in order to grant relief to FICUs that develop innovative solutions to meet the requirements of the Bank Secrecy Act (BSA).

DATES: Comments must be received by February 22, 2021.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF25, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Include ''[Your Name]—Comments on Proposed Rule: Bank Secrecy Act'' in the transmittal.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: *Policy and Analysis:* Timothy Segerson, Deputy Director, Office of Examination and Insurance, (703) 518–6397; *Legal:*Justin Anderson, Senior Staff Attorney, Damon P. Frank, Staff Attorney, and Chrisanthy J. Loizos, Senior Staff Attorney, Office of General Counsel, (703) 518–6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

Requirements related to SARs are codified in 12 CFR 748.1(c). This section of the NCUA's regulations requires FICUs to file SARs under certain conditions. In addition, this section provides for: (i) Board of director or other committee notification; (ii) filing exceptions; (iii) SAR confidentiality; (iv) recordkeeping requirements; (v) supporting documentation requirements; and (vi) limitations on liability. The proposed rule would allow the NCUA to issue exemptions from the regulation's SAR requirements.

II. Background

The NCUA's original SARs regulation required FICUs to report potential violations of law arising from transactions that flow through those institutions.[1] As discussed in more detail later in this document, this regulation has been amended and updated since its inception. The NCUA's purpose for the regulation has, however, remained unchanged because fraud, abusive insider transactions, check-kiting schemes, money laundering, and other financial crimes can pose serious threats to a financial institution's continued viability and, if unchecked, can undermine the public confidence in the nation's financial services industry generally.[2]

In 1992, Congress passed the Annunzio-Wylie Anti-Money Laundering Act (the Anti-Money Laundering Act), which redesigned the criminal referral process applicable to credit unions and made the reporting of certain suspicious transactions a requirement of the BSA.[3] The Anti-Money Laundering Act permitted the Department of the Treasury to require financial institutions, including credit unions, to ''report any suspicious transaction relevant to a possible violation of law or regulation.'' [4]

[1] *See* 50 FR 53294–01 (Dec. 31, 1985).

[2] 58 FR 5663 (Jan. 22, 1993).

[3] Public Law 102–550, 106 Stat. 3672, 4059 (1992).

[4] 31 U.S.C. 5318(g)(1). The quoted text is from section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, which was originally codified at 31 U.S.C. 5314(g). The text was moved as part of the Violent Crime Control and Law Enforcement Act of 1994.

Thereafter, the Department of the Treasury, in consultation with the NCUA, the other federal banking agencies,[5] and law enforcement developed the modern SAR form and reporting process, which standardized the reporting forms and created a centralized database that could be accessed by multiple law enforcement and regulatory agencies.

To implement this new reporting system, in 1996, the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) issued its implementing SAR regulations for financial institutions subject to the requirements of the BSA to, among other things, specifically address the reporting of money laundering transactions and transactions designed to evade the reporting requirements of the BSA.[6] To further implement this new reporting process and reduce unnecessary reporting burdens, the NCUA and the other federal banking agencies contemporaneously amended their criminal referral form regulations to incorporate the new SAR form and reporting database, align their regulatory reporting requirements with FinCEN's BSA reporting requirements, and further refine the reporting processes.[7]

As a result of this redesign and FinCEN's implementing regulations, FICUs are currently required to file SARs under both NCUA and FinCEN regulations. These regulations are not identical but are substantially similar with regard to the specified BSA reporting obligations required by FinCEN. Both the NCUA's and FinCEN's SAR regulations, among other things, require FICUs to file SARs relating to money laundering and transactions that are designed to evade the reporting requirements of the BSA.[8] Furthermore, with respect to the SAR confidentiality requirements in the BSA, both the NCUA's and FinCEN's SAR regulations require FICUs to maintain the confidentiality of a SAR, and any information that would reveal the existence of the SAR, outside of certain circumstances.[9]

However, the NCUA's and the other federal banking agencies' regulations cover a slightly broader range of transactions (*e.g.,* insider abuse at any dollar amount).[10]

The NCUA and FinCEN SAR regulations also provide: (i) That SARs are not required for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities; (ii) that SARs are confidential and shall not be disclosed except as authorized; (iii) recordkeeping requirements for SARs and supporting documentation; (iv) that supporting documentation shall be deemed to have been filed with the SAR; and (v) that supporting documentation shall be made available to appropriate law enforcement agencies upon request. The NCUA and FinCEN SAR regulations also provide a safe harbor from liability to any FICU and any of its officials, employees, or agents that make a voluntary disclosure of any possible violation of law or regulation to a government agency or file a SAR pursuant to the regulations or any other authority. The NCUA's regulation also contains a provision requiring that FICUs promptly notify their board of directors or committee designated by the board of directors to receive such notifications when a SAR has been filed.

FinCEN has general authority to grant exemptions from the requirements of the BSA, which includes granting exemptions under its SAR reporting regulations.[11] FinCEN's regulation provides that ''[t]he Secretary [of Treasury], in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of [the BSA]. Such exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.'' The Secretary has delegated this exemption authority to FinCEN.[12]

As financial technology and innovation continue to develop in the area of monitoring and reporting financial crime and terrorist financing, the NCUA will need the express regulatory flexibility to grant exemptive relief when appropriate in this area on a consistent basis. In 2018, the NCUA, FinCEN, and the other federal banking agencies issued a statement encouraging financial institutions to take innovative approaches to meet their BSA/anti-money laundering (BSA/AML) compliance obligations.[13] That statement explained that financial institutions are encouraged to consider, evaluate, and where appropriate, responsibly implement innovative approaches in this area. Today, innovative approaches and technological developments in the areas of SAR monitoring, investigation and filings may involve, among other things: (i) Automated form population using natural language processing, transaction data, and customer due diligence information; (ii) automated or limited investigation processes depending on the complexity and risk of a particular transaction and appropriate safeguards; and (iii) enhanced monitoring processes using more and better data, optical scanning, artificial intelligence, or machine learning capabilities. Requests for exemptive relief pertaining to innovation or other matters may involve, among other things, expanded investigations and SAR timing issues, SAR disclosures and sharing, continued SAR filings for ongoing activity, SAR outsourcing of responsibilities and practices, the role of agents of FICUs, the use of shared utilities and shared data, and the use and sharing of de-identified data. The NCUA expects that new technologies will continue to prompt additional innovative approaches related to SAR filing and monitoring.

It is important to recognize that any NCUA-issued exemptions from its SAR regulation would not relieve the FICU from independent obligation to comply with FinCEN's SAR regulations, if applicable. To the extent an exemption request from a FICU involves both the NCUA's SAR regulation and FinCEN's SAR regulation, the FICU would need an exemption from both the NCUA and FinCEN. The NCUA expects to coordinate with FinCEN when handling parallel exemptions. As explained above, however, the NCUA's SAR regulation imposes additional requirements not included in FinCEN's SAR regulation. To the extent an exemption request is subject to a requirement imposed by the NCUA's SAR regulation alone (and not a parallel

[5] For purposes of this rulemaking, the other federal banking agencies are defined as the Board of Governors of the Federal Reserve (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC).

[6] 61 FR 4326 (Feb. 5, 1996) (FinCEN). The NCUA's current regulation is codified at 12 CFR 748.1(c)(1)(iv)(B). It should be noted that prior to the adoption of FinCEN's SAR regulation in 1996 and the accompanying revisions to the NCUA's regulation, the NCUA's criminal referral regulation did not have a specific provision that required the reporting of money laundering transactions. However, the required criminal referral form broadly encompassed money laundering and structuring transactions.

[7] 61 FR 11526 (Mar. 21, 1996) (NCUA); 61 FR 4326 (Feb. 5, 1996) (FinCEN).

[8] 12 CFR 748.1(c)(1)(iv)(B) (NCUA); 31 CFR 1020.320(a)(2) (FinCEN).

[9] 12 CFR 748.1(c)(5) (NCUA); 31 CFR 1020.320(e)(1) (FinCEN).

[10] 12 CFR 748.1(c) (NCUA); 12 CFR 208.62 (FRB); 12 CFR 390.355 (FDIC); 12 CFR 21.11, 163.80 (OCC).

[11] *See* 31 U.S.C. 5318(a)(7), with implementing regulations at 31 CFR 1010.970.

[12] Treas. Order 180–01, (re-affirmed Jan. 14, 2020).

[13] Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), *available at https://www.ncua.gov/newsroom/press-release/2018/agencies-issue-joint-statement-encourage-innovative-approaches-bsaaml-compliance.*

FinCEN requirement), the proposed rule would allow the NCUA to exempt a FICU from that requirement.

III. The Proposal

This proposed rule would allow the NCUA to issue exemptions from the requirements of its SAR regulation. Specifically, the proposed rule would add a provision to 12 CFR 748.1 that would provide that the NCUA may exempt a FICU from the requirements of that section. Under the proposed rule, the NCUA would determine whether the exemption is consistent with the purposes of the BSA, if applicable, and with safe and sound practices, and may consider other appropriate factors. The NCUA would also seek FinCEN's determination on whether the exemption would be consistent with the purposes of the BSA. The exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions.

In addition, this proposal would require the NCUA to seek FinCEN's concurrence regarding any exemption requests that involve an exemption from the requirement to file a SAR required by FinCEN regulations implementing the BSA. The proposal would also permit the NCUA to consult with FinCEN regarding other exemption requests. The NCUA may also consult with the other state and federal banking agencies before granting any exemption.

Finally, the proposed rule provides that the NCUA may grant an exemption for a specified time period. Under the proposed rule, the NCUA could also revoke previously granted exemptions if circumstances change related to the factors set out above (consistency with the BSA and safety and soundness) or any imposed conditions.

If the NCUA adopts this proposed rule and uses it to grant exemptions, such exemptions would not relieve a FICU from the obligation to comply with FinCEN's SAR regulation, if applicable. To the extent a FICU is subject to requirements imposed by both the NCUA's SAR regulation and FinCEN's SAR regulation, the FICU would need to seek an exemption from both the NCUA and FinCEN. As explained above, however, the NCUA's SAR regulation imposes additional requirements not included in FinCEN's regulation. To the extent a FICU is subject to a requirement imposed by the NCUA's SAR regulation alone (and not a parallel FinCEN requirement), the proposed rule would allow the NCUA to exempt a FICU from that requirement.

The Board is providing for a 30-day comment period instead of a 60-day comment period because the proposed rule is limited in scope, and the Board believes that 30 days will provide the public adequate time to review and comment on it.[14]

The Board invites comments on the proposed rule, including whether any additional detail relating to the procedures that would be followed in considering, granting or revoking exemptions is necessary. The Board is also specifically requesting comments on whether additional or different factors or standards should be applied in the determination whether to grant an exemption request, as well as the form and manner of the Board's response to an exemption request.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities (defined for purposes of the RFA to include credit unions with assets less than $100 million).[15] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The proposed rule would allow FICUs to request exemptions from certain regulatory requirements if they choose to do so. As a result, it would not cause any increased burden or impose any new requirements on FICUs. Accordingly, the NCUA certifies that the proposed rule would not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to information collection requirements in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or third-party disclosure requirement, each referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule adds a provision to § 748.1(c) that would allow FICUs to submit a written request to NCUA if it wishes to seek an exemption from the requirements of this section. There are 2,932 FICUs that currently file SARs annually. It is estimated that 50 of these FICUs would file for an exemption under the proposed new § 748.1(c)(7); taking 2 hours per response, for a total increase of 100 burden hours. This proposed rule would revise the information collection requirement currently approved under OMB number 3133–0094, as follows:

Title of Information Collection: Suspicious Activity Report by Depository Institutions.

OMB Control Number: 3133–0094.

Estimated Number of Respondents: 2,932.

Estimated Annual Frequency of Response: 65.

Estimated Total Annual Reponses: 191,069.

Estimated Hours per Response: 1.

Estimated Total Annual Burden Hours: 191,119.

Affected Public: Private Sector: Not-for-profit institutions.

The NCUA invites comments on: (a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Due to the limited in-house staff, email comments are preferred. Comments regarding the information collection requirements of this rule should be (1) emailed to: *PRAcomments@ncua.gov* with ''OMB No. 3133–0094'' in the subject line; faxed to 703–837–2406, or mailed to Mackie Malaka, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite

[14] *See* NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2 and IRPS 15–1. 80 FR 57512 (Sept. 24, 2015), *available at https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf.*

[15] *See* NCUA Interpretive Ruling and Policy Statement 87–2, as amended by IRPS 03–2 and IRPS 15–1, 80 FR 57512 (Sept. 24, 2015).

5080, Alexandria, Virginia 22314 and to the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, at *www.reginfo.gov/public/do/PRAMain*. Select ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 748

Security program, report of suspected crimes, suspicious transactions, catastrophic acts and Bank Secrecy Act compliance.

By the National Credit Union Administration Board on December 17, 2020.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR part 748, as follows:

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

■ 1. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801–6809; 31 U.S.C. 5311 and 5318.

■ 2. Amend § 748.1 by adding new paragraph (c)(7) to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) Suspicious Activity Report. * * *

(7) *Exemptions.*

(i) The NCUA may exempt any federally insured credit union from the requirements of paragraph (c) of this section. Upon receiving a written request from a federally insured credit union, the NCUA will determine whether the exemption is consistent with safe and sound practices, and may consider other appropriate factors. The NCUA will also seek FinCEN's determination whether the exemption is consistent with the purposes of the BSA, if applicable. The exemption shall be applicable only as expressly stated in the exemption, may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to transactions or classes of transactions. The NCUA will seek FinCEN's concurrence with regard to any exemption request that would also require an exemption from the requirements of FinCEN's SAR regulations, and may consult with FinCEN regarding other exemption requests. The NCUA also may consult with the other state and federal banking agencies and consider comments before granting any exemption.

(ii) The NCUA will provide a written response to the federally insured credit union that submitted the exemption request after considering whether the exemption is consistent with safe and sound banking, consulting with the appropriate agencies, and seeking concurrence when appropriate. A federally insured credit union that has received an exemption under paragraph (i) of this section may rely on the exemption for a period of time to be communicated by the NCUA in its granting of the exemption, which may indefinite. The NCUA may extend the period of time or may revoke an exemption granted under paragraph (i) of this section. Exemptions may be revoked at the sole discretion of the NCUA. The NCUA will provide written notice to the federally insured credit union of the NCUA's intention to revoke an exemption. Such notice will include the basis for the revocation and will provide an opportunity for the federally insured credit union to submit a response to the NCUA. The NCUA will consider the credit union's response prior to deciding whether to revoke an exemption and will notify the federally insured credit union of the NCUA's decision to revoke an exemption in writing.

[FR Doc. 2021–00048 Filed 1–21–21; 8:45 am]

BILLING CODE 7535–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0102; FRL–10018–62–Region 4]

Air Plan Approval; KY; Gasoline Loading Facilities at Existing Bulk Terminals and New Bulk Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet) on September 5, 2019. The revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and include amendments related to the standards for existing gasoline loading facilities at bulk terminals and new gasoline loading facilities at bulk plants. The amendments to these standards replace a requirement for gasoline tank trucks to possess a valid Kentucky pressure vacuum test sticker with a requirement for specific vapor tightness testing and recordkeeping procedures, clarify rule applicability, and remove language stating that a pressure measuring device will be supplied by the District. EPA is proposing to approve the revisions because they are consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before February 22, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0102 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full

EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8994. Ms. LaRocca can also be reached via electronic mail at *larocca.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. EPA's Proposed Action

EPA is proposing to approve changes to Regulation 6.21, *Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals,* and Regulation 7.20, *Standard of Performance for New Gasoline Loading Facilities at Bulk Plants,* of the Jefferson County portion of the Kentucky SIP, submitted by the Commonwealth of Kentucky on September 5, 2019. The amendments replace the requirement for tank trucks being loaded at bulk terminals and plants to possess a valid Kentucky pressure vacuum sticker with specific vapor tightness testing and recordkeeping requirements and make minor, non-substantive changes as discussed in section II. The SIP revisions update the current SIP-approved versions of Regulation 6.21 (Version 2) and Regulation 7.20 (Version 2) to Version 3.

II. EPA's Analysis of the Revisions

The District's September 5, 2019, SIP revision includes changes to Regulation 6.21 and Regulation 7.20 related to standards for existing gasoline loading facilities at bulk terminals and standards for new gasoline loading facilities at bulk plants, respectively, as described below. The District notes that it enacted these regulations to control volatile organic compound emissions from gasoline loading facilities and that Regulations Parts 6 and 7 apply more stringent standards to a broader cross-section of sources than the federal New Source Performance Standards (NSPS).[1]

The District has revised Regulation 6.21 and Regulation 7.20 to discontinue the practice of requiring gasoline transport vehicles to display a Kentucky pressure vacuum sticker. Specifically, the revisions to Regulation 6.20 and Regulation 7.21 delete the text of subsection 3.6.4 and subsection 3.11.1, respectively, which provide that no owner or operator of a bulk gasoline terminal or plant subject to these regulations may allow a tank truck or trailer to be loaded with gasoline unless the vehicle has ''a valid Kentucky pressure-vacuum test sticker as required by Regulation 6.37 attached and visibly displayed.'' [2] This requirement is replaced with specific procedures for assuring that tank trucks and their associated vapor collection systems have passed the required vapor tightness test on an annual basis. New subsection 3.6.4.1 of Regulation 6.21 and subsection 3.11.1.1 of Regulation 7.20 state that no owner or operator of an existing bulk gasoline terminal or a new bulk gasoline plant shall allow loading unless the gasoline tank truck and its vapor collection system has demonstrated a pressure change within specific parameters. The parameters to be met are a pressure change of no more than 75 millimeter (mm) water (3 inches water) in five minutes when pressurized to 450 mm water (18 inches water) and when evacuated to 150 mm water (6 inches water) using the test procedure described in the regulation.

The SIP revision also adds a new subsection 3.6.4.2 of Regulation 6.21 and a new subsection 3.11.1.2 of Regulation 7.20 to specify the testing procedures that must be used to assure compliance with the new vapor tightness requirements described above. As proposed for incorporation into the SIP, these subsections require that EPA Method 27, ''Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure Vacuum Test,'' as specified in 40 CFR 60, Appendix A, on July 1, 1991, shall be used to determine compliance with subsection 3.6.4.1 of Regulation 6.21 and subsection 3.11.1.1 of Regulation 7.20.[3] The new subsections also require the owner or operator of a tank truck being loaded at an affected facility to have this vapor tightness test completed annually and to maintain all testing records (*i.e.,* test data, date of testing, identification of tank truck, type of repair, retest data and date) for two years after the date of testing, and to make such records available upon request by the District. EPA notes that the District's revised tank truck vapor tightness standards, testing procedures and recordkeeping requirements as proposed for incorporation into the SIP are consistent with the Commonwealth of Kentucky's requirements at 401 KAR 63:031, *Leaks from gasoline tank trucks,* and also with EPA's requirements applicable to gasoline cargo tanks under 40 CFR part 60, subpart XX, *Standards of Performance for Bulk Gasoline Terminals* (*see* 40 CFR 60.505(b)) and 40 CFR part 63, subpart BBBBBB, *National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities* (*see* 40 CFR 63.11092(f)(1) and 63.11094(b)).

The revisions also include minor changes Regulation 6.21 and Regulation 7.20. A non-substantive change to Section 1 of Regulation 6.21 clarifies that the rule applies to each affected facility that was either existing or had a construction permit issued on or before June 13, 1979.[4] The non-substantive changes to Regulation 7.20 clarify that the rule applies to each affected facility which commenced construction, modification, or reconstruction after June 13, 1979; [5] remove language in subsection 3.11.3 such that a pressure measuring device is no longer required to be supplied by the District; and renumber subsections within Section 3.

Because these rule revisions will not increase air pollutant emissions, EPA proposes to determine that, in accordance with CAA section 110(l), that they will not interfere with attainment or maintenance of the NAAQS, reasonable further progress toward attainment of the NAAQS, or any other applicable requirement of the CAA. EPA has preliminarily determined that these changes are consistent with the CAA is therefore proposing to

[1] 40 CFR part 60, subpart XX is the federal NSPS containing standards of performance for bulk gasoline terminals.

[2] The District has no record of ever having created ''Regulation 6.37'' (*see* email from Byron Gary, Louisville Air Pollution Control District, to Sarah LaRocca, EPA Region 4, March 23, 2020), and the Jefferson County portion of the Kentucky SIP does not contain ''Regulation 6.37.'' The District's September 5, 2019, revisions rectify this discrepancy by removing the references to the non-existent ''Regulation 6.37'' and adding new provisions (at subsection 3.6.4 for Regulation 6.21 and subsection 3.11.1 for Regulation 7.20) containing detailed, updated procedures that explicitly state the vapor tightness and recordkeeping requirements.

[3] EPA is not acting on the phrase ''or an alternate procedure approved by the District'' in the District's new subsection 3.6.4.2 of Regulation 6.21 and subsection 3.11.1.2 of Regulation 7.20. The District intends to withdraw this phrase from the submitted SIP revision.

[4] The SIP-approved version of the rule states that it applies to ''each affected facility which was in being or had a construction permit issued by the District before June 13, 1979.'' ''Affected facility'' is defined in Section 2.1 of the rule as ''facilities at a bulk gasoline terminal for loading gasoline into tank trucks, trailers, railroad tank cars, or other mobile, non-marine vessels.''

[5] The SIP-approved version of the rule states that it applies to ''each new affected facility which is commenced after the June 13, 1979.'' ''Affected facility'' is defined in Section 2.1 of the rule as ''a bulk gasoline plant.''

approve these portions of the SIP revisions.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Louisville Metro Air Pollution Control District Regulation 6.21, *Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals,* Version 3, and Regulation 7.20, *Standard of Performance for New Gasoline Loading Facilities at Bulk Plants,* Version 3, state-effective June 19, 2019, with the exception of the phrase ''or an alternate procedure approved by the District'' in Regulation 6.21, subsection 3.6.4.2 and Regulation 7.20, subsection 3.11.1.2. The changes to these rules replace a requirement for gasoline tank trucks to possess valid pressure vacuum test sticker with a requirement for specific vapor tightness testing and recordkeeping procedures, clarify rule applicability, and remove language stating that a pressure measuring device will be supplied by the District. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the revisions to the Jefferson County portion of the Kentucky SIP (Regulation 6.21, Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals, Version 3, and Regulation 7.20, Standard of Performance for New Gasoline Loading Facilities at Bulk Plants, Version 3), submitted on September 5, 2019, as discussed above.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1955 (Pub. L. 104–4);
- Does not have Federalism implications as specified in the Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the national Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). The SIP is not approved to apply on any Indian reservation land or any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: December 11, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2021–00533 Filed 1–21–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0327; FRL–10018–02-Region 1]

Air Plan Approval; Maine; Infrastructure State Implementation Plan Requirements for the 2015 Ozone Standard and Negative Declaration for the Oil and Gas Industry for the 2008 and 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision addresses the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). Today's proposed action includes all elements of these infrastructure requirements except for the ''Good Neighbor'' or ''transport'' provisions, which will be addressed in a future action. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

EPA is also proposing to approve State of Maine submittals of amendments to Chapter 110, Ambient Air Quality Standards, and of statutory conflict-of-interest provisions in 38 Maine Revised Statutes Annotated (MRSA) Section 341–A and 341–C. These two submittals support the state's infrastructure submittal for the 2015 ozone NAAQS.

In addition, we are proposing to convert previous conditional approvals of the sub-element of section 110(a)(2)(E) that addresses State Board Requirements in Maine's infrastructure SIPs for the 2008 ozone; 2008 lead (Pb); 2010 nitrogen dioxide (NO_2); 2010 sulfur dioxide (SO_2); 1997, 2006, and 2012 fine particle ($PM_{2.5}$) NAAQS to full approvals. We are also proposing to convert to full approval previous conditional approvals of section 110(a)(2)(A) (Emission limits and other control measures) in Maine's

infrastructure SIPS for the 1997 and 2006 $PM_{2.5}$.

Finally, EPA is proposing to approve SIP revisions submitted by Maine that provide the state's determination, via a negative declaration for the 2008 and 2015 ozone standards, that there are no facilities within its borders subject to EPA's 2016 Control Technique Guideline (CTG) for the oil and gas industry.

This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before February 22, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2020–0327 at *https://www.regulations.gov,* or via email to *simcox.alison@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1684, email *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background and Purpose

Maine's Infrastructure SIP for the 2015 ozone standard.

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).[2] On February 14, 2020, the Maine Department of Environmental Protection (Maine DEP) submitted a revision to the Maine State Implementation Plan (SIP). The SIP revision addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS.

Maine's Negative declaration for the Oil and Natural Gas Industry for the 2008 and 2015 ozone standards.

On October 27, 2016, EPA published in the **Federal Register** the ''Final Control Techniques Guidelines for the Oil and Natural Gas Industry.'' *See* 81 FR 74798. The CTG provided information to state, local, and tribal air agencies to assist them in determining reasonably available control technology (RACT) for volatile organic compound (VOC) emissions from select oil and natural gas industry emission sources. CAA section 182(b)(2)(A) requires that, for ozone nonattainment areas classified as Moderate or above, states must revise their SIPs to include provisions to implement RACT for each category of VOC sources covered by a CTG document. CAA section 184(b)(1)(B) extends the RACT obligation to all areas of states within the Ozone Transport Region (OTR). Pursuant to CAA section 184(a), Maine is a member state of the OTR. States subject to RACT requirements are required to adopt controls that are at least as stringent as those found in the CTG either by adopting regulations or issuing single-source Orders or Permits that outline what the source is required to do to meet RACT. If no source for a specified CTG exists in a state, the state must submit, as a SIP revision, a negative declaration documenting this fact. On May 18, 2020, Maine DEP submitted for approval into the Maine SIP, a negative declaration for the 2016 CTG for the Oil and Natural Gas Industry for the 2008 and 2015 ozone standards.

A. What is the scope of this rulemaking?

EPA is proposing to approve SIP revisions submitted by Maine on February 14, 2020, addressing the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS, except the transport provisions which will be addressed in a future action. Additionally, we are proposing to approve a regulation (ambient air quality standards) submitted by Maine on May 28, 2019, and a statute (conflict-

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

of-interest provisions) submitted by Maine on September 4, 2019, which support the infrastructure SIP submittal. Finally, EPA is proposing to approve a SIP revision submitted by Maine on May 18, 2020, that provides the state's determination, via a negative declaration, that there are no facilities within its borders subject to EPA's 2016 CTG for the oil and gas industry for the 2008 and 2015 ozone standards.

Regarding the 2015 ozone infrastructure SIP submission, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make ''infrastructure SIP submissions'' to provide for the implementation, maintenance, and enforcement of the NAAQS. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[3] Unless otherwise noted below, we are following that approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[4] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

B. What guidance did EPA use to evaluate Maine's infrastructure SIP for the 2015 ozone standard?

EPA highlighted the statutory requirement to submit infrastructure SIPs within 3 years of promulgation of a new NAAQS in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 memorandum).[5] EPA has issued additional guidance documents and memoranda, including a September 13, 2013, guidance document entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 memorandum).

II. EPA's Evaluation of Maine's Infrastructure SIP for the 2015 Ozone Standard

Maine's February 14, 2020, submission includes a detailed list of Maine Laws and SIP-approved Air Quality Regulations that show precisely how each component of its EPA-approved SIP meets the requirements of section 110(a)(2) of the CAA for the 2015 ozone NAAQS. The following review evaluates the state's submission in light of section 110(a)(2) requirements and relevant EPA guidance. For Maine's February 2020 infrastructure submission, we provide an evaluation of the applicable Section 110(a)(2) elements, excluding the transport provisions.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section (also referred to in today's action as an element) of the Act requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[6] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

In its February 2020 submittal for the 2015 ozone NAAQS, Maine cites state laws and regulations in satisfaction of element A. Maine DEP statutory authority with respect to air quality is set out in 38 MRSA Chapter 4, ''Protection and Improvement of Air.'' Legislative authority giving DEP general authority to promulgate regulations is codified at 38 MRSA Chapter 2, Subchapter 1: ''Organization and Powers.'' Statutory authority to establish emission standards and regulations implementing ambient air quality standards is contained in 38 MRSA Chapter 4, sections 585 and 585–A.

Under element A of its February 14, 2020, infrastructure SIP submittal for the 2015 ozone NAAQS, the Maine DEP cites over 30 state regulations that it has adopted to control emissions related to ozone and the ozone precursors, nitrogen oxides (NO_X) and volatile organic compounds (VOCs). Some of these, with their EPA approval citation,[7] are listed here: 06–096 Code of Maine Regulations (CMR) Chapter 111 Petroleum Liquid Storage Vapor Control (79 FR 65587; November 5, 2014); Chapter 115 Emission License Regulations (81 FR 50353; August 1, 2016); Chapter 127 New Motor Vehicle Emission Standards (70 FR 21959; April 28, 2005); Chapter 129 Surface Coating facilities 77 FR 30216; May 22, 2012); Chapter 134 Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds (65 FR 20749; April 18, 2000); Chapter 138 Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides (67 FR 57148; September 9, 2002); and Chapter 145 NO_X Control Program (70 FR 11879; March 10, 2005).

On May 22, 2019, Maine submitted a SIP revision containing Maine's updated Chapter 110, ''Ambient Air Quality Standards,'' which was previously approved by EPA on June 24, 2014. *See* 79 FR 35695. The updates to Chapter 110 incorporate the current NAAQS for ozone and $PM_{2.5,}$ and update and align the rules governing the Maine ambient air quality standards to provide consistency with the federal NAAQS. Therefore, EPA is proposing to approve updated Chapter 110 into the SIP. Consequently, we are also proposing to convert to full approval previous conditional approvals of section 110(a)(2)(A) for Maine's infrastructure SIPs for the 1997 and 2006 $PM_{2.5}$ NAAQS (October 16, 2012; 77 FR 63228).

EPA proposes that Maine meets the infrastructure requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze ambient air quality data, and to make these data available to EPA upon request. Each year, states submit annual air

[3] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available in the docket for today's action), as well as in numerous agency actions, including EPA's prior action on Maine's infrastructure SIP to address the 2008 Ozone NAAQS. *See* 83 FR 28157 (June 18, 2018).

[4] *See Montana Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

[5] All referenced memoranda are included in the docket for today's action.

[6] See, for example, EPA's final rule on ''National Ambient Air Quality Standards for Lead,'' 73 FR 66964, 67034 (November 12, 2008).

[7] The citations reference the most recent EPA approval of the stated rule or of revisions to the rule.

monitoring network plans to EPA for review and approval. EPA's review of these annual monitoring plans includes our evaluation of whether the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Pursuant to authority granted to it by 38 Maine Revised Statutes Annotated (MRSA) §§ 341–A(1) and 584–A, Maine DEP operates an air quality monitoring network, and EPA approved the state's 2020 Annual Air Monitoring Network Plan for ozone on September 11, 2019.[8]

Furthermore, DEP populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that Maine has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2015 ozone NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

States are required to include a program providing for enforcement of all SIP measures and for the regulation of construction of new or modified stationary sources to meet new source review (NSR) requirements under prevention of significant deterioration (PSD) and nonattainment new source review (NNSR) programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers the following: (i) Enforcement of SIP measures; (ii) PSD program for major sources and major modifications; and (iii) a permit program for minor sources and minor modifications.

Sub-Element 1: Enforcement of SIP Measures

Maine's authority for enforcing SIP measures is established in 38 MRSA Section 347–A, ''Violations,'' 38 MRSA Section 347–C, ''Right of inspection and entry,'' 38 MRSA Section 348, ''Judicial Enforcement,'' 38 MRSA Section 349, ''Penalties,'' and 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' and includes processes for both civil and criminal enforcement actions. Construction of new or modified stationary sources in Maine is regulated by 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' which requires best available control technology (BACT) controls for PSD sources, including the ozone precursors VOC and NO_X. EPA proposes that Maine has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

Sub-Element 2: PSD Program for Major Sources and Major Modifications

Prevention of significant deterioration (PSD) applies to new major sources or modifications made to major sources for pollutants where the area in which the source is located is in attainment of, or unclassifiable with regard to, the relevant NAAQS. EPA interprets the CAA as requiring each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program in place satisfying the current requirements for all regulated NSR pollutants.

Maine DEP's EPA-approved PSD rules, contained at 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' contain provisions that address applicable requirements for all regulated NSR pollutants, including Greenhouse Gases (GHGs).

In determining whether a state has a comprehensive PSD permit program, EPA reviews the SIP to ensure that the air agency has a PSD permitting program meeting the current requirements for all regulated NSR pollutants, including the following EPA rules: The ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (the ''Phase 2 Rule''), 70 FR 71612 (November 29, 2005); the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' (the ''2008 NSR Rule''), 73 FR 28321 (May 16, 2008); and the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (the ''2010 NSR Rule''), 75 FR 64864 (October 20, 2010. In our proposal on March 26, 2018, regarding the submittal of infrastructure SIPS for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS by the Maine DEP, we explained how Maine's SIP meets the requirements of the Phase 2 Rule, the 2008 NSR Rule, and the 2010 NSR Rule. *See* 83 FR 12905. Based on our rationale contained in the March 26, 2018, notice, we propose to approve Maine's infrastructure SIP submittal with respect to the requirements of the Phase 2 Rule, the 2008 NSR Rule, and the 2010 NSR Rule.

We are proposing to approve Maine's February 2020 infrastructure submittal for this PSD sub-element of section 110(a)(2)(C) for the 2015 ozone NAAQS.

Sub-Element 3: Preconstruction Permitting for Minor Sources and Minor Modifications

To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulate emissions of the relevant NAAQS pollutants.

EPA last approved revisions to Maine's minor NSR program on August 1, 2016 (81 FR 50353). Maine and EPA rely on the existing minor NSR program in 06–096 CMR Chapter 115 to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2015 ozone NAAQS.

We are proposing to find that Maine has met the requirement to have a SIP-approved minor new source review permit program as required under Section 110(a)(2)(C) for the 2015 ozone NAAQS.

D. Section 110(a)(2)(D)—Interstate Transport

One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), also known as the ''good neighbor'' provisions, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution.

In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts

[8] EPA's approval letter is included in the docket for this action.

that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. EPA commonly refers to these requirements as Prong 1 (significant contribution to nonattainment) and Prong 2 (interference with maintenance). A state's SIP submission for Prongs 1 and 2 is also referred to as a state's ''Transport SIP.'' In today's action, EPA is not evaluating Maine's Transport SIP (*i.e.,* Prongs 1 and 2; combined as (D)1 in Table 1 below). EPA will address Maine's Transport SIP for the 2015 ozone NAAQS in a future action.

Today's action, however, does address Section 110(a)(2)(D)(i)(II), which requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures included in the applicable implementation plan for any other state under part C of the Act to prevent significant deterioration of air quality and to protect visibility. EPA commonly refers to these requirements as Prong 3 (Prevention of Significant Deterioration) and Prong 4 (Visibility Protection). Today's action also addresses Section 110(a)(2)(D)(ii) of the Act, which requires SIPs to contain provisions to ensure compliance with sections 126 and 115 of the Act relating to interstate and international pollution abatement, respectively.

Section 110(a)(2)(D)(i)(II)—PSD (Prong 3)

To prevent significant deterioration of air quality, this sub-element requires SIPs to include provisions that prohibit any source or other type of emissions activity in one state from interfering with measures that are required in any other state's SIP under Part C of the CAA. As explained in the 2013 memorandum,[9] a state may meet this requirement with respect to in-state sources and pollutants that are subject to PSD permitting through a comprehensive PSD permitting program that applies to all regulated NSR pollutants and that satisfies the requirements of EPA's PSD implementation rules. Maine has a comprehensive PSD permitting program in place satisfying the current requirements for all regulated NSR pollutants, as explained above in the discussion of Section 110(a)(2)(C).

For in-state sources not subject to PSD, this requirement can be satisfied through a fully approved nonattainment new source review (NNSR) program with respect to any previous NAAQS. EPA approved revisions to Maine's NNSR regulations on February 14, 1996. *See* 61 FR 5690. These NNSR regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR part 51.

For these reasons, EPA proposes to approve Maine's submittal for the PSD requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

Section 110(a)(2)(D)(i)(II)—Visibility Protection (Prong 4)

Prong 4 requires a state's SIP to have adequate provisions prohibiting emissions in amounts that will interfere with measures in other states' SIPs to protect visibility. The prong 4 requirement is closely connected to the regional haze program under part C of the CAA, in which states work together in a regional planning process to determine each state's contribution to the visibility impairment in that region and agree to emission reduction measures to improve visibility. Maine is a member of the Mid-Atlantic/North East Visibility Union. EPA regulations require that a state participating in a regional planning process include in its regional haze SIP all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. *See, e.g.,* 40 CFR 51.308(d)(3). Thus, a fully approved regional haze SIP meeting the requirements of 40 CFR 51.308 will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility and will, therefore, satisfy Prong 4.

EPA approved Maine's Regional Haze SIP on April 24, 2012 (77 FR 24385). Accordingly, EPA proposes that Maine meets the visibility protection requirements of 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

Section 110(a)(2)(D)(ii)—Interstate Pollution Abatement

This sub-element requires that each SIP contain provisions requiring compliance with requirements of CAA section 126 relating to interstate pollution abatement. Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources.

EPA-approved regulations require the Maine DEP to provide pre-construction notice of new or modified sources to, among others, ''any State . . . whose lands may be affected by emissions from the source or modification.'' *See* 06–096 CMR Chapter 115, § IX(E)(3); approved March 23, 1993 (58 FR 15422). Such notice ''shall announce availability of the application, the Department's preliminary determination in the form of a draft order, the degree of increment consumption that is expected from the source or modification, as well as the opportunity for submission of written public comment.'' *See* 06–096 CMR Chapter 115, § IX(E)(2).

These public notice requirements are consistent with the Federal SIP-approved PSD program's public notice requirements for affected states under 40 CFR 51.166(q). Therefore, we propose to approve Maine's compliance with the infrastructure SIP requirements of CAA section 126(a) for the 2015 ozone NAAQS. Maine has no obligations under any other provision of CAA section 126, and no source or sources within the state are the subject of an active finding under section 126 with respect to the 2015 ozone NAAQS.

Section 110(a)(2)(D)(ii)—International Pollution Abatement

This sub-element also requires each SIP to contain provisions requiring compliance with the applicable requirements of CAA section 115 relating to international pollution abatement. Section 115 authorizes the Administrator to require a state to revise its SIP to alleviate international transport into another country where the Administrator has made a finding with respect to emissions of a NAAQS pollutant and its precursors, if applicable. There are no final findings under section 115 against Maine with respect to the 2015 ozone NAAQS. Therefore, EPA is proposing that Maine has met the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to CAA section 115 for the 2015 ozone NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

Section 110(a)(2)(E)(i) requires each SIP to provide assurances that the state will have adequate personnel, funding, and legal authority under state law to carry out its SIP. In addition, section 110(a)(2)(E)(ii) requires each state to comply with the requirements for state boards in CAA section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for the implementation of its SIP provisions, the state retain responsibility for ensuring implementation of SIP obligations with respect to relevant

[9] Included in the docket for today's action.

NAAQS. Section 110(a)(2)(E)(iii), however, does not apply to this action because Maine does not rely upon local or regional governments or agencies for the implementation of its SIP provisions.

Sub-Element 1: Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

Maine, through its infrastructure SIP submittal, has documented that its air agency has authority and resources to carry out its SIP obligations. Maine cites 38 MRSA § 341–A, ''Department of Environmental Protection,'' 38 MRSA § 341–D, ''Board responsibilities and duties,'' 38 MRSA § 342, ''Commissioner, duties,'' and 38 MRSA § 581, ''Declaration of findings and intent.'' These statutes provide the Maine DEP with the legal authority to enforce air pollution control requirements and carry out SIP obligations with respect to the 2015 ozone NAAQS. Additionally, state law provides the DEP with the authority to assess preconstruction permit fees and annual operating permit fees from air emissions sources and establishes a general revenue reserve account within the general fund to finance the state clean air programs. Maine also receives CAA sections 103 and 105 grant funds through Performance Partnership Grants along with required state-matching funds to provide funding necessary to carry out SIP requirements.

Maine states in its February 14, 2020, submittal for 2015 ozone NAAQS that the Bureau of Air Quality had a staff of 53 and a budget of $4.8 million for FY 2016. ME DEP staff and operations are funded by the State and through EPA grants, including annual funding through CAA sections 103 and 105 to assist with the costs of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. Maine also has an EPA-approved fee program under CAA title V which is used to support title V program elements such as permitting, monitoring, testing, inspections, and enforcement. Furthermore, ME DEP's budget has been consistent over the past number of years and over these years Maine has been able to meet its statutory commitments under the Act.[10] Based upon Maine's submittal and this additional information, EPA proposes that Maine meets the infrastructure SIP requirements of this sub-element of section 110(a)(2)(E) for the 2015 ozone NAAQS.

Sub-Element 2: State Board Requirements Under Section 128 of the CAA

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128(a) of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. Section 128 further provides that a state may adopt more stringent conflicts of interest requirements and requires EPA to approve any such requirements submitted as part of a SIP.

Maine DEP consists of a Commissioner and a Board of Environmental Protection (''BEP'' or ''Board''), which is an independent authority under state law that reviews certain permit applications in the first instance and also renders final decisions on appeals of permitting actions taken by the Commissioner as well as some enforcement decisions by the Commissioner. Because the Board has authority under state law to hear appeals of some CAA permits and enforcement orders, EPA considers that the Board has authority to ''approve'' those permits or enforcement orders, as recommended in the 2013 Guidance at 42, and that the requirement of CAA § 128(a)(1) applies to Maine—that is, that ''any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter.''

Pursuant to state law, the BEP consists of seven members appointed by the Governor, subject to confirmation by the State Legislature. *See* 38 MRSA § 341–C(1). The purpose of the Board ''is to provide informed, independent and timely decisions on the interpretation, administration and enforcement of the laws relating to environmental protection and to provide for credible, fair and responsible public participation in department decisions.'' *Id.* § 341–B. State law further provides that Board members ''must be chosen to represent the broadest possible interest and experience that can be brought to bear on the administration and implementation of'' Maine's environmental laws and that ''[a]t least 3 members must have technical or scientific backgrounds in environmental issues and no more than 4 members may be residents of the same congressional district.'' *Id.* § 341–C(2). As EPA has also explained in previous notices of proposed rulemakings related to Maine infrastructure SIP submittals, section 341–C fulfills the requirement that at least a majority of Board members represent the public interest, but it does not address the requirement that at least a majority ''not derive any significant portion of their income from persons subject to'' air permits and enforcement orders. *See, e.g.,* 83 FR 66184 at 66192 (December 26, 2018). Nor is section 341–C(2) currently in Maine's SIP. *Id.* In those previous actions, however, Maine DEP committed to revise section 341–C to address the requirement that at least a majority of Board members ''not derive a significant portion of their income from persons subject to'' air permits or enforcement orders and to submit the necessary provisions to EPA for inclusion in the SIP. *Id.*

On September 4, 2019, Maine did so, submitting revisions to 38 MRSA sections 341–C(2) and 341–C(8) for inclusion in the SIP.[11]

Maine revised section 341–C(2) by adding one word, indicating that Board members ''must be chosen to represent the broadest possible *public* interest and experience that can be brought to bear on the administration and implementation of'' Maine's environmental laws. (emphasis added). EPA concludes that the addition of the word ''public'' only strengthens the conclusion that Maine fulfills the requirement that at least a majority of Board members represent the public interest. As for section 341–C(8), it now provides that:

> A board member may not participate in the review of or act on any permitting decision or enforcement order under the federal Clean Air Act . . . if the board member receives or derives a significant portion of that board member's income from persons subject to permits or enforcement orders under the federal Clean Air Act. Board members whose participation is restricted under this paragraph shall recuse themselves from all

[10] *https://www.maine.gov/budget/sites/maine.gov.budget/files/inline-files/Annual%20Report%202018-2019%20NEW.PDF.*

[11] By email dated October 20, 2020, Maine DEP clarified that it was requesting to add 38 MRSA § 341–C(8) to the SIP, except subparagraph (A), which addresses Board member participation in decisions regarding permits issued under the Clean Water Act. The October 20, 2020, email is included in the docket for this action.

permitting and enforcement matters under the federal Clean Air Act.

38 MRSA § 341–C(8)(B). Section 341–C(8) further provides, as recommended in EPA guidance,[12] that ''a significant portion of income'' means ''10% or more of gross personal income for a calendar year'' or ''50% or more if the recipient is over 60'' and receives it ''under retirement, pension or similar arrangement.''

EPA proposes that section 341–C(2) and (8)(B) satisfy the requirements of CAA § 128(a)(1) that at least a majority of Board members ''represent the public interest and do not derive any significant portion of their income from persons subject to'' air permits and enforcement orders. EPA also proposes to add revised sections 341–C(2) and (8)(B) to the SIP, as requested by Maine DEP. We are also proposing to convert to full approval our previous conditional approvals of Maine's infrastructure SIP submittals for the 2008 ozone, 2008 Pb and 2010 NO_2 NAAQS (June 18, 2018; 83 FR 28157); the 2010 SO_2 NAAQS (April 30, 2019; 84 FR 18142); the 1997 and 2006 $PM_{2.5}$ NAAQS (October 16, 2012; 77 FR 63228); and the 2012 $PM_{2.5}$ NAAQS (October 1, 2018; 83 FR 49295) for these particular requirements of section 110(a)(2)(E)(ii).

As noted above, section 128(a)(2) of the Act provides that ''any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.'' The purpose of section 128(a)(2) is to assure that conflicts of interest are disclosed by the ultimate decision maker in permit or enforcement order decisions. *See, e.g.,* 80 FR 42446, 42454 (July 17, 2015). Although the Board is the ultimate decision maker on air permitting decisions in Maine, certain air enforcement orders of the Maine DEP Commissioner are not reviewable by the Board, but rather may be appealed directly to Maine Superior Court. For this reason, EPA interprets the potential conflict-of-interest requirements of CAA § 128(a)(2) to be applicable in Maine to *both* Board members *and* the DEP Commissioner.

In the infrastructure SIP action for the 2008 Pb, 2008 ozone, and 2010 NO_2 NAAQS, EPA determined that Maine's conflict of interest statute, 5 MRSA § 18, and a provision explicitly making it applicable to Board members, 38 MRSA § 341–C(7), together satisfy the CAA section 128(a)(2) requirement for Maine with respect to Board members, and EPA approved both statutes into the Maine SIP. *See* 83 FR 28157 (June 18, 2018). For more information, *see* 83 FR 12905, 12912 (March 26, 2018). EPA proposes that Maine's SIP also satisfies CAA section 128(a)(2) with respect to Board members for the 2015 ozone NAAQS for the same reasons.

Regarding the DEP Commissioner, state law at 38 MRSA § 341–A(3)(D) also explicitly makes that official subject to 5 MRSA § 18, thus satisfying CAA section 128(a)(2) with respect to the Commissioner. While 38 MRSA § 341–A(3)(D) is not currently in the SIP, Maine DEP submitted it to EPA on September 4, 2019, and requested that it be added to the SIP. Therefore, we propose to approve, and incorporate into the Maine SIP, 38 MRSA § 341–A(3)(D) for the 2015 ozone NAAQS. We also propose to convert previous conditional approvals of Maine's infrastructure SIP submittals for the 2008 ozone; 2008 Pb; 2010 NO_2; 2010 SO_2; 1997, 2006, and 2012 $PM_{2.5}$ NAAQS to full approvals for section 128(a)(2).

In sum, and for the reasons provided above, EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(E)(ii) for the 2015 ozone NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.

Maine's infrastructure submittal references several existing state regulations that require sources to monitor emissions and submit reports. Maine 06–096 CMR Chapter 117, ''Source Surveillance'' specifies air-emission sources that are required to operate continuous emission monitoring systems (CEMS) and details the performance specifications, quality assurance requirements and procedures for such systems, and subsequent record keeping and reporting requirements. *See* 54 FR 11524 (August 9, 1988). Maine 06–096 CMR Chapter 137, ''Emission Statements'' requires sources to monitor and report annually to Maine DEP emissions of criteria pollutants and other emissions-related information under certain circumstances. *See* 82 FR 20257 (May 1, 2017).

Maine cites its regulation for implementing its operating permit program pursuant to 40 CFR part 70: 06–096 CMR Chapter 140, ''Part 70 Air Emission License Regulations.'' These regulations identify the sources of air emissions that require a Part 70 air emission license and incorporate the requirements of Title IV and Title V of the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.;* and 38 MRSA §§ 344 and 590. These regulations contain compliance assurance requirements regarding monitoring and reporting for licensed sources requiring a Part 70 air emission license. *See* 66 FR 52874 (October 18, 2001). In addition, Maine cites 06–096 CMR Chapter 115, ''Major and Minor Source Air Emission License Regulations,'' which contains compliance assurance requirements for licensed sources. *See* 81 FR 50353 (August 1, 2016).

Regarding the section 110(a)(2)(F) requirements that the SIP provides for correlation and public availability of emission reports, Maine's emission statement rule, Chapter 137, requires facilities to report emissions of air pollutants on an annual basis. The Maine DEP uses a web-based electronic reporting system, the Maine Air Emissions Inventory Reporting System (''MAIRIS''), to submit reported emissions data to EPA under the national emission inventory (NEI) program. NEI data are available to the public.[13] The MAIRIS system electronically correlates reported emissions data with permit conditions and other applicable standards and identifies inconsistencies and potential compliance concerns.

In addition, Maine DEP certifies that Maine's Freedom of Access law does not include any exceptions that apply to stationary source emissions and that there are no provisions in Maine law that would prevent the use of any credible evidence of noncompliance, as required by 40 CFR 51.212. *See also* 06–096 CMR Chapter 140, § 3(E)(7)(a)(v) (''Notwithstanding any other provision in the State Implementation Plan approved by the EPA or Section 114(a) of the CAA, any credible evidence may

[12] See Memorandum from David O. Bickart to Regional Air Directors, ''Guidance to States for Meeting Conflict of Interest Requirements of Section 128,'' Suggested Definitions, March 2, 1978, included in the docket for this action.

[13] NEI data are available at *https://www.epa.gov/air-emissions-inventories.*

be used for the purpose of establishing whether a person has violated or is in violation of any statute, regulation, or Part 70 license requirement.'').

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(F) for the 2015 ozone NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for state authority analogous to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' Section 303 further authorizes the Administrator to issue ''such orders as may be necessary to protect public health or welfare or the environment'' in the event that ''it is not practicable to assure prompt protection . . . by commencement of such civil action.''

We propose to find that a combination of state statutes and regulations discussed in Maine's submittal provides for authority comparable to that given the Administrator in CAA section 303, as explained below. First, 38 MRSA § 347–A, ''Emergency Orders,'' provides that ''[w]henever it appears to the commissioner, after investigation, that there is a violation of the laws or regulations [DEP] administers or of the terms or conditions of any of [DEP's] orders that is creating or is likely to create a substantial and immediate danger to public health or safety or to the environment, the commissioner may order the person or persons causing or contributing to the hazard to immediately take such actions as are necessary to reduce or alleviate the danger.'' *See* 38 MRSA § 347–A(3). Section 347–A further authorizes the DEP Commissioner to initiate an enforcement action in state court in the event of a violation of such emergency order issued by the Commissioner. *Id.* § 347–A(1)(A)(4). Similarly, 38 MRSA § 348, ''Judicial Enforcement,'' authorizes DEP to institute injunction proceedings ''[i]n the event of a violation of any provision of the laws administered by [DEP] or of any order, regulation, license, permit, approval, administrative consent agreement or decision of the board or commissioner.'' *Id.* § 348(1). Section 348 also authorizes DEP to seek a court order to a restrain a source if it ''finds that the discharge, emission or deposit of any materials into any waters, air or land of th[e] State constitutes a substantial and immediate danger to the health, safety or general welfare of any person, persons or property.'' *Id.* § 348(3). Thus, these provisions authorize DEP to issue an administrative order or to seek a court order to restrain any source from causing or contributing to emissions that present an imminent and substantial endangerment to public health or welfare, or the environment, if there is also a violation of a law, regulation, order, or permit administered or issued by DEP, as the case may be.

Maine also cites 38 MRSA § 591, ''Prohibitions,'' as contributing to its authority. Section 591 provides that ''[n]o person may discharge air contaminants into ambient air within a region in such manner as to violate ambient air quality standards established under this chapter or emission standards established pursuant to section 585, 585–B or 585–K.'' In those cases where emissions of ozone, or ozone precursors may be causing or contributing to an ''imminent and substantial endangerment to public health or welfare, or the environment,'' a violation of § 591 would also occur, since Maine law provides that ambient air quality standards are designed to prevent ''air pollution,'' *id.* § 584, which state law expressly defines as ''the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration *as to be injurious to human, plant or animal life or to property,* or which unreasonably interfere with the enjoyment of life and property,'' *id.* § 582(3) (emphasis added).

In its submittal, Maine further explains that sections 347–A and 591 ''together authorize the Commissioner to issue an emergency order upon finding an apparent violation of DEP laws or regulations to address emissions of criteria pollutants, air contaminants governed by standards promulgated under section 585, and hazardous air pollutants governed by standards promulgated under section 585–B.'' Maine explains that, in the unlikely event that air emissions create a substantial or immediate threat to the public health, safety, or to the environment without violating any DEP law or regulation, the DEP commissioner can notify the Governor of an imminent threat, and the Governor can then exercise emergency authority under 37–B MRSA § 742 to issue an order to terminate the cause of the emergency. In the declaration of a state of emergency, the Governor may, among other things, ''[o]rder the termination, temporary or permanent, of any process, operation, machine or device which may be causing or is understood to be the cause of the state of emergency,'' *id.* § 742(1)(C)(11).

Finally, Maine's submittal cites 06–096 CMR Chapter 109, ''Emergency Episode Regulations,'' which sets forth various emission reduction plans intended to prevent air pollution from reaching levels that would cause imminent and substantial harm and recognizes the Commissioner's authority to issue additional emergency orders pursuant to 38 MRSA § 347–A, as necessary to the health of persons, by restricting emissions during periods of air pollution emergencies. For these reasons, we propose to find that Maine's submittal and certain state statutes and regulations provide for authority comparable to that provided to the Administrator in CAA § 303.

Section 110(a)(2)(G) also requires that, for any NAAQS, Maine have an approved contingency plan for any Air Quality Control Region (AQCR) within the state that is classified as Priority I, IA, or II. *See* 40 CFR 51.152(c). A contingency plan is not required if the entire state is classified as Priority III for a particular pollutant. *Id.* All AQCRs in Maine are classified as Priority III areas for NO_2 and ozone, pursuant to 40 CFR 52.1021. Consequently, as relevant to this proposed rulemaking action, Maine's SIP does not need to contain an emergency contingency plan meeting the specific requirements of 51.152 with respect to NO_2 and ozone.

Maine does, however, as a matter of practice, post on the internet daily forecasted ozone levels through the EPA AIRNOW and EPA ENVIROFLASH systems. Information regarding these two systems is available on EPA's website at *www.airnow.gov.* Notices are sent out to ENVIROFLASH participants when levels are forecast to exceed the current 8-hour ozone standard. In addition, when levels are expected to exceed the ozone standard in Maine, the media are alerted via a press release, and the National Weather Service (NWS) is alerted to issue an Air Quality Advisory through the normal NWS weather alert system. These actions are similar to the notification and communication requirements of 40 CFR 51.152.

EPA proposes that Maine meets the applicable infrastructure SIP requirements for section 110(a)(2)(G), including contingency-plan requirements, for the 2015 ozone NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision from time to time as may be necessary to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever EPA finds that the SIP is substantially inadequate.

Maine's infrastructure submittal references 38 MRSA § 581, ''Declaration of findings and intent,'' which characterizes the state's laws regarding the Protection and Improvement of Air as an exercise of ''the police power of the State in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that reasonably insures the continued health, safety and general welfare of all of the citizens of the State; protects property values and protects plant and animal life.''

In addition, we note that Maine DEP is required by statute to ''prevent, abate and control the pollution of the air[, to] preserve, improve and prevent diminution of the natural environment of the State[, and to] protect and enhance the public's right to use and enjoy the State's natural resources.'' *See* 38 MRSA § 341–A(1). Furthermore, DEP is authorized to ''adopt, amend or repeal rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering.'' *Id.* § 341–H; *see also id.* § 585–A (recognizing DEP's rulemaking authority to propose SIP revisions). These statutes give Maine DEP the power to revise the Maine SIP from time to time as may be necessary to take account of changes in the NAAQS or the availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. Therefore, EPA proposes that Maine meets the infrastructure SIP requirements of CAA section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

Section 110(a)(2)(I) provides that each plan or plan revision for an area designated as a nonattainment area shall meet the applicable requirements of part D of the CAA. EPA interprets section 110(a)(2)(I) to be inapplicable to the infrastructure SIP process because specific SIP submissions for designated nonattainment areas, as required under part D, are subject to a different submission schedule under subparts 2 through 5 of part D, extending as far as 10 years following area designations for some elements, whereas infrastructure SIP submissions are due within three years after adoption or revision of a NAAQS. Accordingly, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; Prevention of Significant Deterioration; Visibility Protection

Section 110(a)(2)(J) of the CAA requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).'' The evaluation of the submission from Maine with respect to these requirements is described below.

Sub-Element 1: Consultation With Government Officials

Pursuant to CAA section 121, a state must provide a satisfactory process for consultation with local governments and Federal Land Managers (FLMs) in carrying out its NAAQS implementation requirements.

Maine 38 MRSA § 341–A(1) authorizes Maine DEP to ''prevent, abate and control the pollution of the air[,] improve and prevent diminution of the natural environment of the State[,] protect and enhance the public's right to use and enjoy the State's natural resources and . . . educate the public on natural resource use, requirements and issues.'' Maine state law further provides that one of the purposes of the BEP is ''to provide for credible, fair and responsible public participation in department decisions,'' 38 MRSA § 341–B, and authorizes it to ''cooperate with other state or federal departments or agencies to carry out'' its responsibilities, *id.* § 341–F(6). In addition, 06–096 CMR Chapter 115, § IX(E)(3), which was approved by EPA on March 23, 1993, requires DEP to provide notice to relevant municipal officials and FLMs, among others, of DEP's preparation of a draft permit for a new or modified source. *See* 58 FR 15422.

In addition, with respect to area reclassifications to Class I, II, or III for PSD purposes, the DEP is required to offer an opportunity for a public hearing and to consult with appropriate FLMs. *See* 38 MRSA § 583–B; and 06–096 CMR Chapter 114, § 1(E). Maine's Transportation Conformity rule at 06–096 CMR Chapter 139 also provides procedures for interagency consultation, resolution of conflicts, and public consultation and notification. Finally, the Maine Administrative Procedure Act (Maine Revised Statutes Title 5, Chapter 375, subchapter 2) requires notification and provision of comment opportunities to all parties affected by proposed regulations. All SIP revisions undergo public notice and opportunity for hearing, which allows for comment by the public, including local governments. EPA proposes that Maine meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

Sub-Element 2: Public Notification

Pursuant to CAA section 127, states must notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

As mentioned above, 38 MRSA § 341–A(1) authorizes Maine DEP to, among other things, ''educate the public on natural resource use, requirements and issues.'' To that end, the DEP issues press releases and posts warnings on its website advising people what they can do to help prevent NAAQS exceedances and avoid adverse health effects on poor air quality days. In addition, the Maine DEP website includes near real-time air quality data, and a record of historical data. Air quality forecasts are distributed daily via email to interested parties. Air quality alerts are sent by email to a large number of affected parties, including the media. Alerts include information about the health implications of elevated pollutant levels and list actions to reduce emissions and to reduce the public's exposure. Also, Air Quality Data Summaries of the year's air quality monitoring results are issued annually and posted on the Maine DEP website. The state is also an active partner in EPA's AirNow and EnviroFlash air quality alert programs.

EPA proposes that Maine meets the infrastructure SIP requirements of this portion of section 110(a)(2)(J) for the 2015 ozone NAAQS.

Sub-Element 3: PSD

EPA has already discussed Maine's PSD program in the context of infrastructure SIPs in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II) and determined that it satisfies the requirements of EPA's PSD implementation rules. Therefore, the SIP also satisfies the PSD sub-element of

section 110(a)(2)(J) for the 2015 ozone NAAQS. EPA proposes to approve the SIP for the PSD sub-element of section 110(a)(2)(J) for the 2015 ozone NAAQS.

Sub-Element 4: Visibility Protection

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, as noted in EPA's 2013 memorandum, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2015 ozone NAAQS. Therefore, we are not proposing action on this sub-element.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

Section 110(a)(2)(K) of the Act requires that a SIP provide for the performance of such air quality modeling as the EPA Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which EPA has established a NAAQS, and the submission, upon request, of data related to such air quality modeling. EPA has published modeling guidelines at 40 CFR part 51, Appendix W, for predicting the effects of emissions of criteria pollutants on ambient air quality. EPA also recommends in the 2013 memorandum that, to meet section 110(a)(2)(K), a state submit or reference the statutory or regulatory provisions that provide the air agency with the authority to conduct such air quality modeling and to provide such modeling data to EPA upon request.

Maine state law implicitly authorizes Maine DEP to perform air quality modeling and provide such modeling data to EPA upon request. *See* 38 MRSA §§ 341–A(1), 581, 591–B. In addition, EPA-approved 06–096 CMR Chapter 115, ''Major and Minor Source Air Emissions License Regulations,'' and 06–096 CMR Chapter 140 Part 70, ''Air Emission License Regulations,'' provide that any modeling required for pre-construction permits and operating permits for minor and major sources be performed consistent with EPA-prescribed modeling guidelines at 40 CFR part 51, appendix W. Chapter 115 also requires that applicants submit data related to modeling to Maine DEP. *See* 06–096 CMR chapter 115, § VII.E. Consequently, the SIP provides for such air quality modeling as the Administrator has prescribed and for the submission, upon request, of data related to such modeling.

In its infrastructure submittal, DEP also cites 06–096 CMR Chapter 116, ''Prohibited Dispersion Techniques,'' which includes regulations applicable to the State's air quality modeling consistent with federal requirements concerning stack height and other dispersion techniques, such as merging of plumes. These regulations also define the area surrounding the source where ambient air quality standards do not have to be met. Maine also collaborates with the Ozone Transport Commission (OTC) and the Mid-Atlantic Regional Air Management Association and EPA in order to perform large-scale urban air shed modeling for ozone if necessary.

EPA proposes that Maine meets the requirements of section 110(a)(2)(K) for the 2015 ozone NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate that each major stationary source pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit.

Maine implements and operates a Title V permit program, *see* 38 MRSA § 353–A; 06–096 CMR Chapter 140, which was approved by EPA on October 18, 2001, *see* 66 FR 52874. To gain this approval, Maine demonstrated the ability to collect sufficient fees to run the program. *See* 61 FR 49289 (September 19, 1996). Maine also notes in its infrastructure submittal that the costs of all CAA permitting, implementation, and enforcement for new or modified sources are covered by Title V fees, which are set by Maine DEP. *See* 38 MRSA §§ 353–A, 352(2)(E). Therefore, EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(L) for the 2015 ozone NAAQS.

M. Section 110(a)(2)(M)—Consultation/ Participation by Affected Local Entities

To satisfy Element M, states must provide for consultation with, and participation by, local political subdivisions affected by the SIP. Maine Administrative Procedure Act, 5 MRSA Chapter 375, requires public notice of all SIP revisions prior to their adoption, which allows for comment by the public, including local political subdivisions. In addition, Maine cites 38 MRSA § 597, ''Municipal air pollution control,'' which provides that municipalities are not preempted from studying air pollution and adopting and enforcing ''air pollution control and abatement ordinances'' that are more stringent than those adopted by DEP or that ''touch on matters not dealt with'' by state law. Finally, Maine cites Chapter 9 of Maine's initial SIP, which was approved on May 31, 1972 and contains intergovernmental cooperation provisions. *See* 37 FR 10842.

EPA proposes that Maine meets the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

N. Maine Regulations Submitted for Incorporation Into the SIP

As noted under sections 110(a)(2)(A) and (E) above, Maine submitted revisions to a regulation and to a statute for approval into the Maine SIP. On May 22, 2019, Maine submitted a SIP revision containing Maine's updated Chapter 110, ''Ambient Air Quality Standards.'' EPA is proposing to approve this revised regulation into the Maine SIP in order to update Maine's ambient air quality standards to be consistent with the 2015 ozone and 2012 $PM_{2.5}$, and to align the rules governing the Maine ambient air quality standards to provide consistency with the federal NAAQS.

On September 4, 2019, to meet conflict-of-interest requirements of section 110(a)(2)(E) for the 2015 ozone NAAQS, as well as for previous infrastructure submittals for other NAAQS, Maine submitted Maine Public Law 2019, Chapter 180 amending 38 MRS Sections 341–C(2) and 341–C(8), effective September 19, 2019; and 38 MRS Section 341–A(3)(D), effective June 15, 2011. EPA is proposing to approve these conflict-of-interest provisions into the Maine SIP.

III. EPA's Evaluation of Maine's Negative Declaration for the Oil and Gas Industry for the 2008 and 2015 Standards

On May 18, 2020, Maine submitted a negative declaration for the 2016 Oil and Natural Gas Industry CTG for the 2008 and 2015 ozone standards. The term ''negative declaration'' means that the state has explored whether any facilities subject to the applicability requirements of the CTG exist within the state and concluded that there are no such sources within its borders. The negative declaration means that Maine has no applicable stationary sources of VOC that are covered by this CTG. This is consistent with EPA's understanding of where sources subject to the Oil and Natural Gas Industry CTG are located based on EPA data resources of industrial activity within the United States, such as the National Emissions Inventory (NEI) database of sources of air pollution, which is available at:

https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei. We also note that EPA Region 1 worked with Maine, and EPA headquarters' technical experts on the CTG, to review the applicability criteria of EPA's 2016 Oil and Gas CTG to assist Maine with its determination. Therefore, we are proposing to approve Maine's negative declaration into the SIP.

IV. Proposed Action

EPA is proposing to approve most of the elements of the infrastructure SIP submitted by Maine on February 14, 2020, for the 2015 ozone NAAQS. Today's action does not include the ''good neighbor'' provisions (*i.e.,* section 110(a)(2)(D)(i)), also known as a state's Transport SIP. Maine's Transport SIP for the 2015 ozone NAAQS will be addressed in a future action.

EPA's proposed action regarding each infrastructure SIP requirement for the 2015 ozone NAAQS is contained in Table 1 below.

TABLE 1—PROPOSED ACTION ON NEW HAMPSHIRE'S INFRASTRUCTURE SIP SUBMITTAL FOR THE 2015 OZONE NAAQS

Element	2015 ozone NAAQS
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)1: Enforcement of SIP measures	A
(C)2: PSD program for major sources and major modifications	A
(C)3: PSD program for minor sources and minor modifications	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	No action
(D)2: PSD	A
(D)3: Visibility Protection	A
(D)4: Interstate Pollution Abatement	A
(D)5: International Pollution Abatement	A
(E)1: Adequate resources	A
(E)2: State boards	A
(E)3: Necessary assurances with respect to local agencies	NA
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)1: Consultation with government officials	A
(J)2: Public notification	A
(J)3: PSD	A
(J)4: Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

In the above table, the key is as follows:
A: Approve.
+: Not germane to infrastructure SIPs.
No action: EPA is taking no action on this infrastructure requirement.
NA: Not applicable.

EPA also is proposing to approve, and incorporate into the Maine SIP, the following Regulation, submitted on May 28, 2019, and Statutes, submitted on September 4, 2019:

06–096 CMR Chapter 110, ''Ambient Air Quality Standards,'' effective March 27, 2019.

Maine Public Law 2019, Chapter 180 amending 38 MRS Sections 341–C(2) and 341–C(8) (except 341–C(8)A), effective September 19, 2019.

Maine Public Law 2011, Chapter 357 amending 38 MRS Section 341–A(3)(D), effective June 15, 2011.

In addition, we are proposing to convert to full approvals previous conditional approvals of section 110(a)(2)(E) in Maine's infrastructure SIPs for the 2008 ozone; 2008 Pb; 2010 NO_2; 2010 SO_2; and 1997, 2006, and 2012 $PM_{2.5}$ NAAQS, as well as previous conditional approvals of section 110(a)(2)(A) in Maine's infrastructure SIPS for the 1997 and 2006 $PM_{2.5}$.

Finally, we are proposing to approve a negative declaration for EPA's 2016 CTG entitled ''Control Techniques Guidelines for the Oil and Natural Gas Industry'' for the 2008 and 2015 ozone standards into the Maine SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference amendments to Maine's regulation Chapter 110, Ambient Air Quality Standards, and conflict-of-interest provisions in Maine's 38 MRSA Section 341. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not

impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 2, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

[FR Doc. 2021–00458 Filed 1–21–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2020–0565; FRL–10019–39]

TSCA Section 21 Petition for Rulemaking; Reasons for Agency Response; Denial of Requested Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition; reasons for Agency response.

SUMMARY: This document provides the reasons for the Environmental Protection Agency's (EPA's) response to a petition it received under the Toxic Substances Control Act (TSCA) from the Center for Environmental Health, Cape Fear River Watch, Clean Cape Fear, Democracy Green, Toxic Free NC, and the NC Black Alliance on October 14, 2020. Generally, the petitioners requested that EPA initiate a rulemaking proceeding or issue an order under TSCA compelling health and environmental effects testing on 54 Per- and Polyfluoroalkyl Substances (PFAS) that the petitioners assert are manufactured by The Chemours Company (Chemours) at its chemical production facility in Fayetteville, North Carolina. The petitioners also request that EPA ask the National Academy of Sciences to create an independent science panel to oversee all aspects of the testing program requested by the petitioners. After careful consideration, EPA denied the TSCA petition for reasons discussed in this document.

DATES: EPA's response to this TSCA section 21 petition was signed January 7, 2021.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0565, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Public Reading Room are closed to visitors with limited exceptions. The EPA/DC staff continue to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Daniel R. Ruedy, Data Gathering and Analysis Division (7410M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–7974; email address: *ruedy.daniel@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action, however, may be of particular interest to those persons who manufacture (which includes import), distribute in commerce, process, use, or dispose of one or more of the 54 Per- and Polyfluoroalkyl Substances (PFAS) identified in the petition. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or to issue an order under TSCA sections 4, 5(e), or 5(f). A TSCA section 21 petition must set forth the facts which it is claimed establish that it is necessary to initiate the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly

commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court seeking to compel initiation of the requested proceeding within 60 days of a denial or, if EPA does not issue a decision, within 60 days of the expiration of the 90-day period.

C. What criteria apply to a decision on a TSCA section 21 petition?

1. Legal Standard Regarding TSCA Section 21 Petitions

TSCA section 21(b)(1) requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to initiate the proceeding requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under which actions have been requested in evaluating this TSCA section 21 petition.

2. Legal Standard Regarding TSCA Section 4(a)(1)(A)(i)

EPA must make several findings in order to require testing under TSCA section 4(a)(1)(A)(i) through a rule or order. EPA must find that the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment; that information and experience are insufficient to reasonably determine or predict the effects of a chemical substance on health or the environment; and that testing of the chemical substance is necessary to develop the missing information. Further, TSCA section 4(h) requires EPA to reduce and replace the use of vertebrate animals in the testing of chemical substances or mixtures, to the extent practicable, scientifically justified, and consistent with the policies of TSCA.

3. Legal Standard Regarding TSCA Section 26

TSCA section 26(h) requires EPA, in carrying out TSCA sections 4, 5, and 6, to make a decision using ''scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science,'' while also taking into account six considerations, including the relevance of information and any uncertainties. TSCA section 26(i) requires that decisions under TSCA sections 4, 5, and 6 be ''based on the weight of scientific evidence.'' TSCA section 26(k) requires that EPA consider information that is reasonably available in carrying out TSCA sections 4, 5, and 6.

II. Summary of the TSCA Section 21 Petition

A. What action was requested?

On October 14, 2020, Center for Environmental Health, Cape Fear River Watch, Clean Cape Fear, Democracy Green, Toxic Free NC, and the NC Black Alliance (petitioners) petitioned EPA to initiate a rulemaking proceeding or issue an order under TSCA section 4(a)(1)(A)(i), compelling health and environmental effects testing, including studies of communities exposed to PFAS-contaminated drinking water, on 54 PFAS that the petitioners assert are manufactured by The Chemours Company (Chemours) at its chemical production facility in Fayetteville, North Carolina. The petitioners also request that EPA ask the National Academy of Sciences to create an independent science panel to oversee all aspects of the testing program requested by the petitioners (Ref. 1).

B. What support did the petitioners offer?

The petitioners assert that TSCA section 4(a)(1)(A)(i) requires EPA to direct testing on a chemical substance or mixture if all three of the following findings are made:

- The manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment;
- There is insufficient information and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted; and
- Testing of such substance or mixture with respect to such effects is necessary to develop such information.

1. May Present an Unreasonable Risk of Injury to Health or the Environment

The petitioners assert that the 54 PFAS ''may present an unreasonable risk of injury to health or the environment'' because there allegedly is substantial evidence that PFAS may be toxic, pointing to the following documents:

- The Agency for Toxic Substances and Disease Registry's (ATSDR's) draft 2018 Toxicological Profile for Perfluoroalkyls (Ref. 2) and EPA's PFAS Action Plan (Ref. 3), as well as other literature, in support of the contention that exposure to certain, specific PFAS are associated with adverse health effects.
- EPA's Significant New Use Rule (SNUR) for Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances (Ref. 4), which states ''[w]hile most studies to date have focused primarily on PFOS, structure-activity relationship analysis indicates that the results of those studies are applicable to the entire category of PFAS, which includes PFOS. Available test data have raised concerns about their potential developmental, reproductive, and systemic toxicity.''
- EPA's Consent Order regarding DuPont Premanufacture Notices (Ref. 5), which states in part ''[t]oxicity studies on the analogs PFOA (perfluorooctanoic acid) and PFOS (perfluorooctanesulfonic acid) indicate developmental, reproductive and systemic toxicity in various species. Cancer may also be of concern. These factors, taken together, raise concerns for potential adverse chronic effects in humans and wildlife.''

The petitioners conclude, based on the references provided, that ''all PFAS have the potential for causing the adverse health and environmental effects linked to well-characterized substances like PFOS and PFOA because of their common structural characteristics,'' and that ''there is a strong basis to conclude that the 54 PFAS covered by this petition 'may present an unreasonable risk of injury' '' (Ref. 1, pg. 18).

2. Insufficiency of Information

The petitioners assert that for these 54 PFAS, there is insufficient information and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted. To support their assertion, the petitioners point to:

- ATSDR's draft 2018 Toxicological Profile for Perfluoroalkyls (Ref. 2), which the petitioners assert underscores the absence of toxicological data; and
- EPA's PFAS Action Plan (Ref. 3), which states ''[t]here are many PFAS of potential concern to the public that may be found in the environment. Most of these PFAS lack sufficient toxicity data to inform our understanding of the potential for adverse human or ecological effects.''

On page 21 of their petition, the petitioners assert: ''[k]ey data gaps include measurement of physical-chemical properties, methods of analysis, assessment of partitioning, bioaccumulation, and degradation, pharmacokinetics, and toxicity, especially for the endpoints commonly observed for the better studied PFAS, such as liver toxicity, and effects on the immune system, lipid metabolism, kidney, thyroid, development, reproduction, and cancer. In addition, despite their widespread detection in environmental media, ecotoxicity data are generally lacking.''

3. Need for Testing

The petitioners assert that the mechanisms of PFAS toxic effects are not defined, and that in vitro assays or other predictive, computational approaches are not validated or available. The petitioners also request animal toxicity studies on three mixtures of PFAS that are allegedly representative of exposure for residents in the Cape Fear Watershed.

Finally, the petitioners request ecotoxicity studies, and studies of physical chemical properties and environmental fate and transport, which they say EPA ''has previously determined are necessary because of the widespread presence and mobility of PFAS in environmental media.''

4. Testing Framework and Specific Studies

The petitioners propose a testing approach that they call for Chemours to perform. The list of 54 PFAS was divided into Tier 1 substances for which there is ''known human exposure based on detection in blood, food, or drinking water,'' and Tier 2 substances for which ''human exposure is probable based on detection in environmental media'' (Ref. 1, pg.12). The testing approach includes human health effects studies in experimental animals, animal studies on PFAS mixtures, studies of communities exposed to PFAS-contaminated drinking water, human half-life studies, physical-chemical properties and fate and transport studies, and ecotoxicity testing.

III. Background Considerations: Review of EPA Actions, Activities, and Regulations Relating to PFAS

To understand EPA's reasons for denying the petitioners' requests, it is important to first review the details of EPA's ongoing actions involving PFAS. EPA is committed to supporting states, tribes, and local communities in addressing challenges with PFAS. As a part of this effort, EPA is already taking action to identify solutions to address PFAS in the environment. Examples of such ongoing actions are detailed in this unit.

A. PFAS Action Plan: Program Update

In May 2018, EPA convened a two-day National Leadership Summit on PFAS that brought together more than 200 federal, state, and local leaders to discuss steps to address PFAS. The Summit set the following goals: Evaluate the need for a maximum contaminant level for PFOA and PFOS in drinking water, evaluate designating PFOA and PFOS as hazardous substances, issue groundwater cleanup guidances for PFOA and PFOS, and develop toxicity values for GenX and perfluorobutane sulfonic acid (PFBS). Following the Summit, EPA interacted with more than 1,000 people during PFAS-focused community engagement events in Exeter, New Hampshire; Horsham, Pennsylvania; Colorado Springs, Colorado; Fayetteville, North Carolina; and Leavenworth, Kansas, as well as through a roundtable in Kalamazoo, Michigan, and an event with tribal representatives in Spokane, Washington. As a result of these meetings and building on the goals identified at the Summit and the approximately 120,000 public comments received by the agency, EPA developed the PFAS Action Plan, which was issued in February 2019 (Ref. 3).

The PFAS Action Plan is the first multi-media, multi-program, national research, management, and risk communication plan to address an emerging contaminant like PFAS. The PFAS Action Plan outlines the tools EPA is developing to, among other things, address PFAS in drinking water, identify and clean up PFAS contamination, expand monitoring of PFAS, increase PFAS scientific research, and exercise effective enforcement tools. The Action Plan outlines EPA's commitment to take a wide variety of actions to address this emerging contaminant in both short-term and long-term timeframes. Together, these efforts are helping EPA and its partners identify and better understand PFAS contaminants generally, clean up current PFAS contamination, prevent future contamination, and effectively communicate risk with the public. In February 2020, EPA issued the *PFAS Action Plan: Program Update* (available at *https://www.epa.gov/pfas/pfas-action-plan-program-update-february-2020*) to provide an update on all of the actions taken and work completed in the year since the PFAS Action Plan was issued. As it continues to implement the PFAS Action Plan, EPA is committed to coordinating closely with multiple entities, including other federal agencies, states, tribes, local governments, water utilities, industry, and the public.

B. Interim Strategy for PFAS in Federally Issued National Pollutant Discharge Elimination System (NPDES) Permits

EPA's Office of Water (OW) is currently leading multiple actions in the PFAS Action Plan that will help the Agency better understand and effectively manage risk from exposure to PFAS. These OW-led actions include developing analytical methods for detecting PFAS in drinking water and other environmental media, evaluating PFAS treatment techniques, conducting data collection and analysis to evaluate the need for regulations to control PFAS discharges from certain categories of point sources, understanding PFAS exposure from various environmental media, and evaluating statutory and regulatory mechanisms to manage adverse human health and environmental impacts from PFAS exposure.

While OW's work is advancing, a need for an interim strategy to address point source discharges of PFAS in EPA-issued NPDES permits was identified. On February 6, 2020, a workgroup was established to develop an interim NPDES permitting strategy to address PFAS in EPA-issued CWA section 402 permits. The workgroup was charged with exploring options for how to address these pollutants while the CWA framework for addressing PFAS discharges pursuant to the NPDES program is under development. The workgroup's goal was to develop a strategy that would serve to guide the Agency's CWA NPDES permitting approach on an interim basis across the EPA Regions as informed by input from state partners. Each of the ten EPA Regions appointed a representative to the workgroup.

To develop potential recommendations for an interim PFAS NPDES strategy, the workgroup conducted a thorough review of the NPDES permitting process, with a specific focus on PFAS. This included examining CWA section 402 authorities and permit writing practices to understand where unregulated contaminants, such as PFAS, may fit into the permit development process; analyzing existing state-issued NPDES permits with PFAS monitoring requirements (identified through EPA's NPDES Integrated Compliance Information System (ICIS)) to

understand the prescribed analytical methods for detecting PFAS, monitoring frequency, and detection benchmarks in current permits; and obtaining input and perspectives from state partners. In November 2020, EPA issued a memo detailing an interim NPDES permitting strategy for PFAS. This strategy is being implemented for EPA-issued NPDES permits.

C. Workshop on Federal Government Human Health PFAS Research With the National Academies of Sciences, Engineering and Medicine

On October 26–27, 2020, the National Academies of Science, Engineering, and Medicine (NASEM) held a Workshop on Federal Government Human Health PFAS Research. This workshop was the result of collaboration between EPA, the U.S. Department of Defense (DoD), the U.S. Department of Agriculture (USDA), and the U.S. Department of Health and Human Services (HHS) and will help further coordinate PFAS research across the federal government. Aggressively addressing PFAS has been an active and ongoing priority for this Administration, and the goal of the workshop was to discuss ongoing federal research and data gaps. Following the workshop, NASEM will compile a report summarizing the discussion and views of workshop participants on how to ensure that the federal research program for PFAS is robust and focused on addressing the highest priority human health research. Workshop proceedings will be published in early 2021.

D. Safe Drinking Water Act (SDWA) Actions for PFOA and PFOS

EPA has taken a number of actions under SDWA, consistent with the PFAS Action Plan and its statutory and regulatory authorities. In 2016, EPA established health advisories for PFOA and PFOS (Ref. 6) based on the Agency's assessment of the latest peer-reviewed science to provide drinking water system operators, and state, tribal and local officials who have the primary responsibility for overseeing these systems, with information on the health risks of these chemicals, so they can take the appropriate actions to protect their residents. To provide Americans, including the most sensitive populations, with a margin of protection from a lifetime of exposure to PFOA and PFOS from drinking water, EPA established the health advisory levels at 70 parts per trillion.

EPA is committed to following the regulatory process established under SDWA and supporting states and public water systems as they determine the appropriate steps to reduce exposure to PFOA and PFOS in drinking water.

E. National Primary Drinking Water Regulation for PFOA and PFOS

On March 10, 2020, EPA published a notice (85 FR 14098, FRL–10005–88) seeking comment on proposed determinations to regulate PFOA and PFOS. EPA is considering the public comments on this notice and expects to issue final regulatory determination in January 2021. If EPA issues final determinations to regulate PFOA and PFOS, SDWA requires that the EPA publish a proposed regulation within 24 months of the final determination and promulgate a final regulation within 18 months of proposal (SDWA allows the Agency to extend that final rule deadline by 9 months).

Under the third Unregulated Contaminant Monitoring Rule (UCMR 3) (85 FR 26072, FRL–9660–4), from 2013 to 2015, EPA required almost 5,000 public water systems to monitor for six PFAS (see *https://www.epa.gov/dwucmr/third-unregulated-contaminant-monitoring-rule*). The results of this monitoring were used by EPA in making the proposed regulatory determination for PFOA and PFOS. EPA has committed to monitoring for more PFAS in the UCMR 5 and at lower levels than was possible under the UCMR 3. EPA expects to publish a proposed UCMR 5 in January 2021.

F. PFOA Stewardship Program

EPA launched the PFOA Stewardship Program (Ref. 7) in January, 2006 because of concerns about the impact of PFOA and long-chain PFAS on human health and the environment, including concerns about their persistence, presence in the environment and in the blood of the general U.S. population, long half-life in people, and developmental and other adverse effects in laboratory animals.

By March 1, 2006, the eight major companies in the PFAS industry submitted commitments to the PFOA Stewardship Program. Specifically, these companies committed to reducing PFOA from facility emissions and product content by 95 percent no later than 2010, and to work toward eliminating PFOA from emissions and product content no later than 2015. The companies participating in the PFOA Stewardship Program were global companies with business operations in the United States and other countries.

To meet the program goals, most companies stopped the manufacture and import of long-chain PFAS, and then transitioned to alternative chemicals. Other companies exited the PFAS industry altogether. All participating companies state that they met the PFOA Stewardship Program goals. In July 2020 EPA codified and expanded the impact of the PFOA Stewardship program through the issuance of the long chain PFAS SNUR, as discussed in Unit III.H.

G. Addition of Certain PFAS to the Toxics Release Inventory (TRI) Regulations

The National Defense Authorization Act for Fiscal Year 2020 (NDAA) (Pub. L. 116–92) added certain PFAS to the list of chemicals required to be reported to the TRI and established a 100-pound reporting threshold for these substances. EPA's TRI is an important tool that provides the public with information about the use of certain chemicals by tracking their management and associated activities. U.S. facilities in different industry sectors must report annually how much of each chemical is released to the environment and/or managed through recycling, energy recovery, and treatment. TRI helps support informed decision-making by companies, government agencies, non-governmental organizations and the public. For example, EPA uses TRI information to understand releases and potential exposures to chemicals being assessed under TSCA.

In June 2020, the Agency published a final rule (85 FR 37354, June 22, 2020; FRL–10008–09) that updated the regulations to reflect the addition of these PFAS to the TRI by the NDAA. Per the NDAA requirements, the PFAS additions became effective as of January 1, 2020. Reporting for these PFAS will be due to EPA by July 1, 2021, for calendar year 2020 data. By July 31, 2021, EPA expects to release raw data concerning the TRI-listed PFAS from information collected. Additionally, the NDAA provides a framework for additional PFAS to be added automatically to the TRI list on January 1 of the year following certain EPA actions (NDAA section 7321(c)). For example, the NDAA automatically adds a PFAS to the TRI list in response to the EPA finalizing a toxicity value for it.

H. Regulatory Actions Under TSCA

EPA has taken a range of regulatory actions under TSCA to address potential exposures and/or risks associated with manufacturing, processing, and use of PFAS. EPA's New Chemicals program reviews alternatives for PFOA and related chemicals before they enter the marketplace to identify whether the range of toxicity, fate and bioaccumulation issues that have caused past concerns with perfluorinated substances may be

present in order to ensure that the new chemicals do not present an unreasonable risk to health or the environment.

TSCA Section 5(a) SNURs can be used to require notice to EPA before chemical substances and mixtures are used in new ways that might create concerns. Under TSCA section 5(a), EPA can determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2):

- Projected volume of manufacturing and processing of a chemical substance.
- Extent to which a use changes the type or form of exposure of humans or the environment to a chemical substance.
- Extent to which a use increases the magnitude and duration of exposure of humans or the environment to a chemical substance.
- Reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

Once EPA designates a use of a chemical substance as a significant new use, TSCA section 5(a) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture (including import) or process the chemical substance for that use. The SNUN obligates EPA to assess risks that may be associated with that significant new use, including risks to potentially exposed or susceptible subpopulations identified as relevant by EPA under the conditions of use; make a determination under the statute; and, if appropriate, regulate the proposed activity before it occurs.

EPA has issued the following SNURs for PFOS and PFAS:

- On March 11, 2002, EPA issued a final SNUR (Ref. 8) for 13 PFAS specifically included in the voluntary phase out of PFOS by 3M that took place between 2000 and 2002.
- On December 9, 2002, EPA issued a final SNUR (Ref. 9) for 75 PFAS specifically included in the voluntary phase out of PFOS by 3M that took place between 2000 and 2002.
- On October 9, 2007, EPA issued a final SNUR (Ref. 10) for 183 PFAS that were on the public TSCA Inventory and have the characteristic PFAS chemical structure of a perfluorinated carbon chain (Rf) greater than, or equal to, C5 attached to an SO_2 group connected to the rest of the molecule. In addition, the proposal also included those chemicals with Rf ranges of perfluorinated carbon chains shorter than C5, and greater than C5, for example, C4–C12 and C6–C12.
- On October 22, 2013, EPA issued a final SNUR (Ref. 11) for certain PFOA-related chemicals as part of carpets, a category of potentially harmful chemicals once used on carpets to impart soil, water, and stain resistance.
- On July 27, 2020, EPA issued a final SNUR (Ref. 12) for certain PFOA-related chemicals. The SNUR modifies the requirements for a subset of LCPFAC chemical substances in the existing SNUR at 40 CFR 721.10536 in the following ways: (1) Designating manufacturing (including importing) or processing of LCPFAC chemical substances listed in the list of LCPFAC chemical substances for any use that was no longer ongoing after December 31, 2015, as a significant new use; and (2) Designating manufacturing (including importing) or processing of PFOA or its salts, which are considered LCPFAC chemical substances, and all other LCPFAC chemical substances for any use not ongoing as of January 21, 2015, the date on which the proposed rule was published, as a significant new use. For this final SNUR, EPA also made an exemption at 40 CFR 721.45(f) inapplicable for persons who import LCPFAC chemical substances listed in the list of LCPFAC chemical substances in this unit and PFOA or its salts as part of a surface coating on articles because there is reasonable potential for exposure to LCPFAC chemical substances, including PFOA, if these chemical substances are incorporated as surface coatings in articles and then imported.

In addition, in December 2020, EPA issued draft guidance (Ref. 13) for public comment outlining which imported articles are covered by the July 2020 final rule for certain long-chain PFAS. After considering comments, EPA intends to issue the final guidance promptly.

PFOS was not reported as manufactured (including imported) into the United States as part of the 2012 Chemical Data Reporting (CDR) effort or the previous collection effort in 2006. CDR requires manufacturers (including importers) to report if they meet certain production volume thresholds, generally 25,000 lbs at a single site. The last time PFOS manufacture was reported to EPA as part of this collection effort was 2002; nonetheless, there are some limited ongoing uses of PFOS (see 40 CFR 721.9582).

I. Increasing Research and Understanding PFAS

Building on the work outlined in the February 2019 PFAS Action Plan, the Agency expanded its research efforts and capabilities by launching the PFAS Innovative Treatment Team (PITT) in spring 2020. The PITT was a full-time, multi-disciplinary research team that concentrated their efforts and expertise on a single problem for six months: How to remove, destroy, and test PFAS-contaminated media and waste. The PITT's goals were to:

- Assess current and emerging destruction methods being explored by EPA, universities, other research organizations, and industry;
- Explore the efficacy of destruction methods while considering by-products to avoid creating new environmental hazards; and
- Evaluate destruction methods' feasibility, performance, and costs to validate potential solutions.

This work initiated under the PITT will add practical knowledge to EPA's efforts under the PFAS Action Plan. States, tribes, and local governments will be able to use this information to select the approach that best fits their circumstances, leading to greater confidence in cleanup operations and safer communities.

Besides the innovative work of PITT, EPA and its researchers continue to work hard in many other areas to help the nation address PFAS and protect public health. This work includes:

- Validating methods to detect and quantify PFAS in various environmental media, such as water, air, and biosolids. EPA has already released a number of these methods, including Methods 533 and 537.1 that together can measure 29 PFAS in drinking water;
- Evaluating treatment technologies that remove PFAS from drinking water. For example, researchers are investigating the effectiveness of point-of-use systems and have recently published research on commercially available systems that use both reverse osmosis and granular activated carbon;
- Developing standard human health toxicity reference values for certain PFAS. For example, Agency scientists are working on a toxicity assessment for PFBS, GenX chemicals, and five other PFAS that will help states, tribes, and local communities understand the toxicity of these substances so that they can make more informed choices to protect the public's health;
- Providing technical assistance to states and tribes as they work to address a variety of PFAS challenges; and
- Funding external researchers to better understand the potential impacts of PFAS on water quality and availability in rural communities and agricultural operations across the United States.

IV. Disposition of TSCA Section 21 Petition

A. What was EPA's response?

After careful consideration, EPA has denied the petition. A copy of the Agency's response, which consists of the letter to the petitioners and this document, is posted on the EPA petition website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-21#reporting.* The response, the petition (Ref. 1) and other information is available in the docket for this TSCA section 21 petition (see **ADDRESSES**).

The denial is not based on lack of concern with PFAS. In fact, EPA's high concern for these chemicals is detailed in Unit III. of this document. EPA is leading the national efforts to understand PFAS and reduce PFAS risks to the public through implementation of its PFAS Action Plan and through active engagement and partnership with other federal agencies, states, tribes, industry groups, associations, local communities, and the public. Instead, EPA finds the petitioners have not met their burden under TSCA section 21, as explained in Unit IV.B. of this document.

B. What was EPA's reason for this response?

In considering the petition within the statutory 90-day petition review period, EPA evaluated the information presented or referenced in the petition and considered that information in the context of the applicable authorities and requirements contained in TSCA sections 4, 21, and 26. Also, notwithstanding that the burden is on the petitioners to present ''the facts which it is claimed establish that it is necessary'' for EPA to initiate the rule or issue the order sought, EPA nonetheless also evaluated relevant information that was reasonably available to the Agency during the 90-day petition review period.

As detailed extensively in the units that follow, EPA finds the petitioners have not provided the facts necessary for the Agency to determine for each of the 54 PFAS that existing information and experience are insufficient and testing of such substance or mixture with respect to such effects is necessary to develop such information. These deficiencies, among other findings, are detailed in this document.

1. Insufficient Information and Experience

The petition does not set forth the facts necessary to demonstrate that there is ''insufficient information and experience'' for each of the 54 PFAS. The petitioners state, in part, ''[f]or the 54 PFAS, the sufficiency of available information should be determined by comparing available data with the known adverse effects of other PFAS. The goal should be to conduct a scientifically sound assessment of each of the 54 chemicals for the critical toxic endpoints that have been identified in studies on PFOS, PFOA and other well-characterized studies'' (Ref. 1, pg. 21). However, the petitioners do not provide evidence that they conducted an assessment to support a finding of insufficient information and experience.

The petitioners instead point to broad statements in the EPA PFAS Action Plan, such as ''[t]here are many PFAS of potential concern to the public that may be found in the environment. Most of these PFAS lack sufficient toxicity data to inform our understanding of the potential for adverse human or ecological effects'' (Ref. 3, pg. 31). The petitioners base the fate and transport studies they request on EPA's PFAS Action Plan, which the petitioners quote as stating ''information for many PFAS sources, fate and transport, and human and ecological exposure is sparse, both spatially and temporally'' (Ref. 3, pg. 31). However, the PFAS Action Plan broadly states only that such information for ''many PFAS sources'' is sparse; nowhere does it state or conclude that such information is sparse for each of the 54 PFAS the petitioners identify. To further demonstrate that the information and experience on the 54 PFAS is allegedly insufficient, the petitioners cite ATSDR's 2018 Toxicological Profile for perfluoroalkyls, which the petitioners acknowledge ''identifies numerous critical data gaps for PFAS *as a class*'' (emphasis added). The ATSDR 2018 Toxicological Profile for perfluoroalkyls remains in draft form and discusses information on 14 perfluoroalkyl compounds, none of which are among the 54 the petitioners identify. Importantly, the ATSDR 2018 Toxicological Profile further states that ''[t]he term 'perfluoroalkyls' used throughout the toxicological profile is referring to these 14 compounds and the information may not be applicable to other perfluoroalkyl compounds'' (Ref. 2, pg. 1). Despite this qualifying statement, the petitioners proceed to state without reference or additional explanation that ''[t]he 54 substances covered by this petition fit this pattern'' (Ref. 1, pg. 21). This extrapolation is fundamentally important to the petitioners' argument, yet there are no facts in the petition to support the statement. The petitioners are not clear as to what ''pattern'' the 54 PFAS fit, and no other sources are provided.

Absent any factual support in the petition, EPA finds that mere reference to these broad statements from the EPA PFAS Action Plan and ATSDR's 2018 Toxicological Profile for perfluoroalkyls does not provide the facts necessary for the Agency to determine there is insufficient information or experience for these 54 PFAS.

To further characterize this baseline deficiency, EPA performed a cursory search of public literature and databases for reasonably available information on any of the 54 PFAS identified by the petitioners. Representative findings of this cursory review are summarized as follows:

- On June 8, 1987, EPA issued a Final Test Rule for Fluoroalkenes (Ref. 14) requiring testing for certain health effects for four fluoroalkenes, two of which are among the 54 PFAS the petitioners identify: Hexafluoropropylene (CAS No. 116–15–4) and tetrafluoroethylene (CAS No. 116–14–3). The petitioners do not identify this test rule and the testing it required, nor do the petitioners explore and explain why the testing the rule ordered did not generate the health effects data the petitioners are now requesting.
- EPA's web-based CompTox Chemistry Dashboard integrates various types of data for curated substances linked to chemical structures, including physicochemical, environmental fate and transport, exposure, usage, in vivo toxicity, and in vitro bioassay data (Ref. 15). A query for some of the 54 PFAS in CompTox returned physical/chemical property and hazard data. For example, CompTox has published experimental averages for melting point, boiling point, water solubility, and vapor pressure, and some hazard data and sources for tetrafluoroethylene (CAS No. 116–14–3). CompTox also has published some hazard data for hexafluoropropylene (CAS No. 116–15–4) and perflouromethylperfluorovinyl ether (CAS No. 1187–93–5). Finally, some physical/chemical data for perfluoro (4-methyl-3, 6- dioxaoct-7-ene) sulfonyl fluoride (CAS No. 16090–14–5) are also readily available. The petitioners mention none of these data, nor have they provided the facts necessary to show that the information in CompTox is insufficient.
- ChemView provides the public access to reports and dataset information including data submitted to EPA, EPA Assessments and Actions, and data provided by other EPA Offices and federal organizations (Ref. 16). A query for each of the 54 PFAS in

ChemView returned records for 17 of the 54 PFAS. For example, for perflouromethylperfluorovinyl ether (CAS No. 1187–93–5), a substantial risk report is available from DuPont Haskell Global Centers on reproduction/developmental toxicity screening tests (OECD 422/OPPTS 870.3650, one of the methods identified in the petitioners' testing program) in rats (Ref. 17). The petitioners do not mention this report, nor do they explain why the report fails to provide the data being sought. In this way, the petitioners once again have not provided the facts necessary to show that the information in ChemView is insufficient.

• Tetrafluoroethylene (CAS No. 116–14–3) is pre-registered under the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation. The European Chemicals Agency (ECHA) has compiled chemical/physical property data (partition coefficient, potential for bioaccumulation, etc.) for this PFAS. Hexafluoropropylene (CAS No. 116–15–4) is also pre-registered under REACH, and ECHA has compiled some chemical/physical property data for this PFAS. The petitioners mention none of these data, nor have they provided the facts necessary to show that this information is insufficient.

TSCA section 21 requires the petitioner, not EPA, to ''set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule under TSCA sections 4, 6, or 8, or an order under TSCA sections 4 or 5(e).'' Because EPA, upon a cursory review, has been able to easily identify existing, reasonably available information not mentioned in the petition, the petitioners have failed in carrying their burden of setting forth facts which are necessary to demonstrate that there is insufficient information, thereby necessitating the requested action.

For one of the 54 PFAS, identified only as N1AF, the petitioners provide no structurally-descriptive chemical name, structure, or molecular formula. Absent such identifying information, the petitioners have not provided the facts necessary to determine whether there is ''insufficient information or experience'' for this chemical.

Because the petitioners are seeking tests for each of the 54 PFAS, the petitioners must set forth facts that establish it is necessary to pursue the rule or issue the order the petitioners seek under TSCA section 4. The petitioners must affirmatively demonstrate, through facts, that there is ''insufficient information and experience'' for each of the 54 PFAS. For the reasons described in this document, EPA finds the petition does not set forth facts necessary to demonstrate ''insufficient information and experience'' for each of the 54 PFAS, and has therefore not demonstrated that the rule or order requested is necessary.

2. Testing of Such Substance or Mixture With Respect to Such Effects Is Necessary To Develop Such Information

The petitioners do not demonstrate ''testing of such substance or mixture with respect to such effects is necessary to develop such information.'' EPA finds that the petitioners failed to address ongoing testing and data collections for some of the 54 PFAS, thereby failing to set forth facts that are necessary to establish there is a need for the testing sought in the petition. This research may provide information that overlaps with testing the petitioners requested, which would render the information unnecessary under TSCA section 4(a)(1)(A)(i)(III). Testing, both planned and underway, on some of the 54 PFAS that the petitioners identify is described in this unit:

• Five of the 54 PFAS have been subjected to all Tier 1 in vitro, toxicokinetic, and clearance studies: Hepatotoxicity, developmental toxicity, immunotoxicity, mitochondrial toxicity, developmental neurotoxicity, endocrine disruption, general toxicity, intrinsic hepatic clearance, plasma protein binding (PPB), and renal reuptake. These studies are ongoing and results are expected by April 2021. Data are expected to be available via the PFAS Dashboard by the end of June 2021.

• An additional six of the 54 PFAS have results from some Tier 1 in vitro testing. Two have been included in systematic evidence mapping (SEM), a systematic review approach used to identify available data and characterize knowledge gaps.

• Three of the 54 PFAS have in vivo data identified from a non-EPA source.

In addition, the following studies are planned or in process by EPA's Office of Research and Development (ORD).

• ORD will test for nuclear receptor and stress gene responses of a PFAS library in HepG2 cells. This research will apply a high-throughput assay for transcription factor activation to screening the first and second PFAS screening sets totaling 150 samples. Additional samples may be added to meet developing needs. This assay platform contains known targets of several PFAS including the estrogen receptor and peroxisome proliferator-activator receptors, as well as many other potential targets. Well-studied PFAS such as PFOA and PFOS will be included to help put findings for data-poor chemicals in better context. Data sets will support development of read-across and category approaches for this class of chemicals.

• Bioactivity of PFAS as determined using gene expression and in vitro cellular pathology is another area of ongoing research at EPA. This research will apply broad-based high-content screening assays to characterize the bioactivity of a set of PFAS in multiple human cell types. The resulting dataset will contribute to an overall assessment of the effects of PFAS on important physiological functions that overlap with effects measured in the testing the petitioners requested.

• ORD will also conduct high-throughput in vitro testing of PFAS to fill data gaps and refine structural and mechanistic groupings. This project falls under the Human Health Testing/Toxicokinetics research area that will generate and analyze a large data set on ~150 PFAS using a variety of New Approach Methodologies (NAMs) in support of EPA's mission to manage and regulate PFAS. This research effort will add a dataset of NAMs testing results for 15 PFAS. Selection of these 15 chemicals will be driven by the initial analysis of the 150 chemicals and provide the ability to fill identified data gaps and potentially test hypotheses developed from the initial analysis. Testing of these 15 PFAS will include transcription factor activity profiling; estrogen-dependent cell proliferation; high-content, cellular phenotypic imaging; high-throughput transcriptomics; zebrafish embryo development; and developmental neurotoxicity. The results will support the overarching EPA PFAS research to: (1) Develop a hierarchical scheme of chemical structural categories that are enriched by NAM data; (2) Use categories as predefined neighborhoods to evaluate degree of concordance in NAM results within categories and across categories as a means to infer in vivo toxicity; (3) Predict categorization of larger PFAS inventory and read-across coverage; and (4) Recommend further in vivo testing for PFAS categories.

• In the FY2020 Further Consolidated Appropriations Act (Pub. L. 116–94), Congress appropriated funds for EPA to address research needs in support of designating PFAS as hazardous substances under CERCLA. The research needed to help support this designation include: Chemical and physical characteristics of PFAS; Toxicity and kinetic information; environmental prevalence; Manufacturing and use

information; and Information on the regulatory status of PFAS. This ongoing research will add significantly to currently available hazard information for PFAS that could be used for this designation, as well as for risk assessment use broadly by Program Offices.

NDAA section 7351 amended TSCA section 8(a) to include a one-time reporting event of PFAS manufactured (including imported) in any year since January 1, 2011. TSCA section 8(a)(7) authorizes EPA to collect ''[a]ll existing information concerning the environmental and health effects of such substance or mixture.'' Under this rule, EPA may collect information that overlaps with some of the information requested by petitioners. A final TSCA section 8(a) rule for these PFAS must be issued by January 1, 2023, and EPA has initiated the relevant rulemaking process for the proposed rule that is expected to be issued in 2021.

The petitioners also call for an epidemiologic study consisting of 100,000 participants from communities exposed to PFAS-contaminated drinking water. A similar, multi-site health study is being implemented through the Centers for Disease Control and Prevention and ATSDR cooperative agreements. As ATSDR states, ''[i]nformation learned from the multi-site study will help all communities in the U.S. with PFAS exposures, including those that were not part of the study.'' The petitioners mention this multi-site study but provide no analysis of overlap or what testing might be duplicative with what is proposed and thus might not be necessary, whether based on community characteristics, demographics, specific PFAS or mixture, or levels of exposure.

For some of the 54 PFAS, only a degradant is detected in the Cape Fear River per the information provided by petitioners, not the parent chemical for which the petitioners have requested testing. The petitioners have not identified why it is necessary to test the parent chemicals and not the degradants actually detected in the Cape Fear River. For example, the petitioners do not demonstrate that testing of the parent chemical would identify effects relevant to the degradants.

The petitioners specifically identify and acknowledge that ''5 of the 54 listed chemicals in this petition are also designated for testing in the Chemours North Carolina consent decree. These tests would not need to be replicated in response to this petition'' (Ref. 1, pg. 30). EPA finds this avoidance of duplicative testing tacitly acknowledges that for these five PFAS, testing is not necessary to develop information on health or environmental effects. The petitioners' attempt to avoid duplicative testing as a result of the Chemours North Carolina consent decree, but no other duplicative testing, further emphasizes their failure to address readily available information concerning the other activities EPA has identified in this unit.

3. Class-Based Approach to Testing

TSCA section 4(h)(1)(B)(ii) ''encourage[s]'' EPA to consider ''the grouping of 2 or more chemical substances into scientifically appropriate categories in cases in which testing of a chemical substance would provide scientifically valid and useful information on other chemical substances in the category.'' Accordingly, EPA is currently investigating ways to group similar PFAS by likeness into subcategories for purposes of research, data collection, hazard determinations, and other activities (Ref. 18). EPA and the National Toxicology Program collaborated to construct a PFAS screening library subset composed of 75 PFAS on a structural category basis and considerations such as structural diversity within a category, data availability, and read-across category-level weight (*e.g.,* value of substance for anchoring read-across trends within a category, serving as an analog); four of the 54 PFAS the petitioners identify are included in this subset (Ref. 19). The petitioners mention this effort, but incorrectly state that just two of the 54 PFAS the petitioners cover are included in the EPA testing (Ref. 1, pg. 22).

The petitioners take the opposite approach, requesting testing on each of the 54 PFAS individually. The petitioners fail to address why a class-based approach is not appropriate, while also indirectly referring to the efforts to address PFAS as a class. For example, the petitioners allege that conclusions about all 54 PFAS can be based on the ATSDR 2018 Toxicological Profile even though none of the 54 PFAS are addressed in the toxicological profile, and concedes that the ATSDR 2018 Toxicological Profile ''identifies numerous critical data gaps for PFAS *as a class*'' (emphasis added). Additionally, among the references allegedly supporting the assertion that PFAS present serious health and environmental concerns, the petitioners cite a commentary entitled ''Scientific Basis for Managing PFAS as a Chemical Class'' (Ref. 20). This commentary acknowledges PFAS ''demand a more efficient and effective approach'' when it comes to testing and seeks to ''provide scientific justification for why a class-based approach is appropriate and necessary for all PFAS.'' Because the petitioners acknowledge the 54 PFAS share similarities with other members of the class, and the petitioners do not explore these similarities as a means of streamlining the extent of the testing requested, or to inform the petitioners' ''tiered screening and testing process,'' EPA finds the petitioners have not provided the facts necessary to determine, for each of the 54 PFAS, that ''testing of such substance or mixture with respect to such effects is necessary to develop such information.'' Therefore, they have not demonstrated that the rule or order they requested is necessary.

4. Practicability of National Academy of Sciences Oversight

The petitioners also request that the National Academy of Sciences (NAS) oversee all aspects of the proposed testing program. EPA finds such an oversight arrangement is not within the scope of what a TSCA section 21 petitioner can request when seeking the initiation of a rule or the issuance of an order under TSCA section 4. Further, projects and studies must meet certain conditions for the NAS to accept private funding. As an example, NAS does not generally oversee studies where the study sponsor would have a direct financial interest in the outcome of the testing program. EPA is not in a position to require NAS to oversee the testing requested by the petitioners, and the petitioners provide no administrative or organizational procedures for implementation.

5. Selection of PFAS for Health and Environmental Effects Testing

Attachment 2 of the petition divides the 54 PFAS at issue into Tier 1 substances ''for which there is known human exposure based on detection in blood, food or drinking water,'' and Tier 2 substances ''for which human exposure is probable based on detection in environmental media.'' However, the petitioners do not set forth facts showing that for all 40 PFAS it ranks as Tier 2 substances, ''human exposure is probable based on detection in environmental media'' or that ''a strong inference of exposure can be drawn from their presence in surface water, stormwater, wastewater, sediment, groundwater, soil, private wells, and/or air emissions'' (Ref. 1, pg. 19). The petitioners support their assertion that some of the Tier 2 PFAS were detected in environmental media with two studies (Ref. 21, 22); for nine of these, no other studies are provided for

inclusion based on presence in environmental media (Ref. 1, Attachment 2). Three of these nine PFAS were not directly detected in the two studies. Further, for some of these nine PFAS, only degradant products were detected in the Cape Fear River; the parent compounds the petitioners specifically identify for testing were not. Thus, for nine of the 54 PFAS, the petitioners provide weak or no evidence for presence in environmental media upon which to base its ''strong inference of exposure'' assertion (Ref. 1, pg. 19).

6. Scientific Standards

EPA finds the petitioners have not evaluated the quality of the data they have provided or indicated how they conducted their searches, evaluated the quality of the sources, or indicated what gaps were located and then explained why the specific tests requested, as compared to others, would provide the data being sought. Such an evaluation is necessary for EPA to conduct the considerations under TSCA section 26(h).

7. Vertebrate Testing

TSCA section 4(h) requires that EPA reduce and replace the use of vertebrate animals in the testing of chemical substances under TSCA section 4. EPA must consider ''as appropriate and to the extent practicable and scientifically justified, reasonably available existing information, including (i) Toxicity information; (ii) Computational toxicology and bioinformatics; and (iii) High-throughput screening methods and the prediction models of those methods.''

The testing program the petitioners request would require testing on vertebrates. For example, OCSPP Test Guidelines 850.2300, 870.3650, and 870.7800, among other test guidelines, require vertebrate testing. Due to the number of PFAS involved and tests requested, the petitioners' request would require testing on a large number of vertebrates. Yet, as previously discussed, the petition fails to provide reasonably available existing toxicity information on the 54 PFAS, and as such the petition has not provided sufficient facts for EPA to consider reasonably available existing information and encourage and facilitate the use of test methods that reduce or replace the use of vertebrates, group chemical substances as appropriate to reduce the use of vertebrates, and facilitate the formation of consortia for jointly conducted testing.

C. What was EPA's conclusions?

EPA denied the request to initiate a rule or issue an order under TSCA section 4 because the TSCA section 21 petition does not set forth the facts necessary for the Agency to determine for each of the 54 PFAS that existing information and experience are insufficient and testing of such substance or mixture with respect to such effects is necessary to develop such information. Therefore, the petitioners have not demonstrated that the rule or order they requested is necessary.

V. References

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

1. Center for Environmental Health, Cape Fear River Watch, Clean Cape Fear, Democracy Green, Toxic Free NC, The NC Black Alliance to Andrew Wheeler, Administrator, Environmental Protection Agency. Petition to Require Health and Environmental Testing Under the Toxic Substances Control Act on Certain PFAS Manufactured by Chemours in Fayetteville, North Carolina. October 13, 2020.

2. Agency for Toxic Substances and Disease Registry (ATSDR). Notice; Availability of Draft Toxicological Profile: Perfluoroalkyls. **Federal Register**. 83 FR 28849, June 21, 2018 (Docket No. ATSDR–2015–0004).

3. EPA. EPA's Per- and Polyfluoroalkyl Substances (PFAS) Action Plan. EPA 823R18004. February 14, 2019. *https://www.epa.gov/pfas/epas-pfas-action-plan.*

4. EPA. Proposed Rule; Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule. **Federal Register**. 80 FR 2885, January 21, 2015 (FRL–9915–63).

5. EPA. Consent Order regarding DuPont Premanufacture Notices P08–508 and P09–509. (2009). *https://chemview.epa.gov/chemview/proxy?filename=sanitized_consent_order_p_08_0508c.pdf.*

6. EPA. Notice of Availability; Lifetime Health Advisories and Health Effects Support Documents for Perfluorooctanoic Acid and Perfluorooctane Sulfonate. **Federal Register**. 81 FR 33250, May 25, 2016 (FRL–9946–91–OW).

7. EPA. Fact Sheet: 2010/2015 PFOA Stewardship Program. Washington, DC: US Environmental Protection Agency, Office of Pollution Prevention and Toxics. *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-20102015-pfoa-stewardship-program.*

8. EPA. Final Rule; Perfluoroalkyl Sulfonates; Significant New Use Rule. **Federal Register**. 67 FR 11008, March 11, 2002 (FRL–6823–6).

9. EPA. Final Rule; Perfluoroalkyl Sulfonates; Significant New Use Rule. **Federal Register**. 67 FR 72854, December 9, 2002 (FRL–7279–1).

10. EPA. Final Rule; Perfluoroalkyl Sulfonates; Significant New Use Rule. **Federal Register**. 72 FR 57222, October 9, 2007 (FRL–8150–4).

11. EPA. Final Rule; Perfluoroalkyl Sulfonates and Long-Chain Perfluoroalkyl Carboxylate Chemical Substances; Final Significant New Use Rule. **Federal Register**. 78 FR 62443, October 22, 2013 (FRL–9397–1).

12. EPA. Final Rule; Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule. **Federal Register**. 85 FR 45109, July 27, 2020 (FRL–10010–44).

13. EPA. Draft Compliance Guide for Imported Articles Containing Surface Coatings Subject to the Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances Significant New Use Rule; Notice of Availability and Request for Comment. **Federal Register**. 85 FR 81466, December 16, 2020 (FRL–10017–86).

14. EPA. Final Rule; Fluoroalkenes; Final Test Rule. **Federal Register**. 52 FR 21516, June 8, 1987 (FRL–3214–8).

15. Williams, A.J., Grulke, C.M., Edwards, J. et al. The CompTox Chemistry Dashboard: a community data resource for environmental chemistry. *Journal of Cheminformatics.* 9, 61. 2017.

16. EPA. Introduction to ChemView. May 28, 2020. *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/introduction-chemview.*

17. DuPont Haskell Global Centers to 8(e) Coordinator, Office of Pollution Prevention and Toxics, Environmental Protection Agency. Substantial Risk Report for 3,3,3-Trifluoromethyl-1,2,2-trifluorovinyl ether, CAS #1187–93–5. November 8, 2007. *https://chemview.epa.gov/chemview/proxy?filename=2007-11-8EHQ-07-16360B_8ehq_1107_16360b.pdf.*

18. EPA. EPA and Partners Describe a Chemical Category Prioritization Approach to Select 75 PFAS for Testing using New Approach Methods. February 26, 2019. *https://www.epa.gov/sciencematters/epa-and-partners-describe-chemical-category-prioritization-approach-select-75-pfas.*

19. Patlewicz, G. et al. A Chemical Category-Based Prioritization Approach for Selecting 75 Per- and Polyfluoroalkyl Substances (PFAS) for Tier Toxicity and Toxicokinetic Testing. *Environmental Health Perspectives* 127(1). January 11, 2019. *https://doi.org/10.1289/EHP4555.*

20. Kwiatkowski, C. et al. Scientific Basis for Managing PFAS as a Chemical Class. *Environmental Science & Technology Letters.* 7,8:532–543. 2020. *https://doi.org/10.1021/acs.estlett.0c00255.*

21. Strynar, M. et al. Identification of Novel Perfluoroalkyl Ether Carboxylic Acids

(PFECAs) and Sulfonic Acids (PFESAs) in Natural Waters Using Accurate Mass Time-of-Flight Mass Spectrometry (TOFMS). *Environmental Science & Technology*. 49: 11622–116302015. *https://pubs.acs.org/doi/abs/10.1021/acs.est.5b01215*.

22. McCord, J. and M. Strynar. Identification of Per- and Polyfluoroalkyl Substances in the Cape Fear River by High Resolution Mass Spectrometry and Nontargeted Screening. *Environmental Science & Technology* 53(9): 4717–4727. 2019. *https://doi.org/10.1186/s13321-017-0247-6.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: January 7, 2021.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2021–00456 Filed 1–21–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[GN Docket No. 20–32; Report No. 3165; FRS 17372]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding by David A. LaFuria, on behalf of Smith Bagley, Inc., Russell D. Lukas, on behalf of Coalition of Rural Wireless Carriers, Carri Bennet, on behalf of Rural Wireless Association, Inc. and Jill Canfield, on behalf of NTCA-The Rural Broadband Association, Matthew B. Gerst, on behalf of CTIA and Maurita Coley, on behalf of Multicultural Media, Telecom and internet Council Convenors, 5G Fund Supporters.

DATES: Oppositions to the Petitions must be filed on or before February 8, 2021. Replies to an opposition must be filed on or before February 16, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Valerie M. Barrish, Auctions Division, Office of Economics and Analytics, (202) 418–0660 or *Valerie.Barrish@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3165, released January 6, 2021. The full text of the Petitions can be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/*. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Establishing a 5G Fund for Rural America, FCC 20–150, published at 85 FR 75770, November 25, 2020, in GN Docket No. 20–32. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 5.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–00464 Filed 1–21–21; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 86, No. 13
Friday, January 22, 2021

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States adopted six recommendations and one official statement at its virtual Seventy-third Plenary Session. The appended recommendations address: (a) Rules on Rulemakings; (b) Protected Materials in Public Rulemaking Dockets; (c) Agency Appellate Systems; (d) Government Contract Bid Protests Before Agencies; (e) Publication of Policies Governing Agency Adjudicators; and (f) Agency Litigation Webpages. The official statement addresses Agency use of Artificial Intelligence.

FOR FURTHER INFORMATION CONTACT: For Recommendations 2020–1 and 2020–2, Todd Rubin; for Recommendation 2020–3, Gavin Young; for Recommendations 2020–4 and 2020–6, and Statement #20, Mark Thomson; and for Recommendation 2020–5, Leigh Anne Schriever. For each of these actions the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.* At its virtual Seventy-third Plenary Session on December 16–17, 2020, the Assembly of the Conference adopted six recommendations and one official statement.

Recommendation 2020–1, *Rules on Rulemakings.* This recommendation encourages agencies to consider issuing rules governing their rulemaking procedures. It identifies subjects that agencies should consider addressing in their rules on rulemakings—without prescribing any particular procedures—and it urges agencies to solicit public input on these rules and make them publicly available.

Recommendation 2020–2, *Protected Materials in Public Rulemaking Dockets.* This recommendation offers agencies best practices for protecting sensitive personal and confidential commercial information in public rulemaking dockets. It identifies, in particular, best practices for agencies to use when redacting, summarizing, and aggregating comments that contain such information. It also encourages agencies to provide public notices that discourage commenters from submitting such information in the first place.

Recommendation 2020–3, *Agency Appellate Systems.* This recommendation offers agencies best practices to improve administrative review of hearing-level adjudicative decisions with respect to case selection, decision-making process and procedures, management oversight, and public disclosure and transparency. In doing so, it encourages agencies to identify the objectives of such review and structure their appellate systems to serve those objectives.

Recommendation 2020–4, *Government Contract Bid Protests Before Agencies.* This recommendation suggests improvements to the procedures governing agency-level procurement contract disputes—commonly called bid protests—under the Federal Acquisition Regulation and agency-specific regulations to make those procedures more simple, transparent, and predictable. It urges agencies to clarify what types of decisions can be the subjects of agency-level bid protests, what processes and deadlines will govern such protests, and who in the agency will decide such protests; make it easier for protesters to get information about the decisions they protest; and publish more data on agency-level protests.

Recommendation 2020–5, *Publication of Policies Governing Agency Adjudicators.* This recommendation encourages agencies to disclose policies governing the appointment and oversight of adjudicators that bear on their impartiality and constitutional status. It offers best practices on how to provide descriptions of, and access to, such policies on agency websites.

Recommendation 2020–6, *Agency Litigation Webpages.* This recommendation offers agencies best practices for making their federal court filings and relevant court opinions available to the public on their websites, with particular emphasis on materials from litigation dealing with agency regulatory programs. It provides guidance on the types of litigation materials that will be of greatest interest to the public and on how agencies can disseminate the materials in a way that makes them easy to find.

Statement #20, *Agency Use of Artificial Intelligence.* This statement identifies issues agencies should consider when adopting, revamping, establishing policies and practices governing, and regularly monitoring artificial intelligence systems. Among the topics it addresses are transparency, harmful biases, technical capacity, procurement, privacy, security, decisional authority, and oversight.

The Appendix below sets forth the full texts of these six recommendations and the official statement. The Conference will transmit the recommendations and statement to affected agencies, Congress, and the Judicial Conference of the United States, as appropriate. The recommendations and statement are not binding, so the entities to which they are addressed will make decisions on their implementation.

The Conference based these recommendations and the statement on research reports that are posted at: *https://www.acus.gov/meetings-and-events/plenary-meeting/73rd-plenary-session.* Committee-proposed drafts of the recommendations and statement, and public comments received in advance of the plenary session, are also available using the same link.

Dated: January 14, 2021.

Shawne C. McGibbon,

General Counsel.

Appendix—Recommendations and Statement of the Administrative Conference of the United States

Administrative Conference Recommendation 2020–1

Rules on Rulemakings

Adopted December 16, 2020

Numerous agencies have promulgated rules setting forth the policies and procedures they will follow when conducting informal rulemakings under 5 U.S.C. 553.[1] The rules can cover a variety of practices, including processes for initiating and seeking public input on new rules, coordinating with the Office of Management and Budget and other agencies as a rule is being formulated, and obtaining approval from agency leadership before a proposed rule is issued or finalized. Agencies refer to these rules by different names. This Recommendation calls them ''rules on rulemakings.''

Rules on rulemakings vary—in terms of the particular matters they address, their scope and comprehensiveness, and other characteristics—but they share several common features. First, they authoritatively reflect the agency's position as to what procedures it will observe when adopting new rules. By ''authoritative,'' this Recommendation means that a rule on rulemakings sets forth the procedures that agency officials responsible for drafting and finalizing new rules will follow in at least most cases within the rule on rulemakings' scope, though it may contemplate the possibility that agency leadership could authorize an alternative set of procedures.[2]

Second, rules on rulemakings do more than simply summarize or explain rulemaking requirements of the Administrative Procedure Act and other statutes, although they often serve an explanatory function at the same time that they set forth the procedures the agencies will follow in conducting rulemakings. Rules on rulemakings set forth additional commitments by an agency concerning how it will conduct rulemakings. And third, agencies disseminate rules on rulemakings publicly rather than only internally. They appear on agency websites and are often published not only in the **Federal Register** but also in the *Code of Federal Regulations* (CFR).

Rules on rulemakings can serve at least four important objectives. First, they promote efficiency by ensuring that both agency officials and those outside the agency know where to go to find the agency's rulemaking policies. Second, they promote predictability by informing the public that the agency will follow particular procedures, thereby allowing the public to plan their participation in the rulemaking process accordingly. Third, they promote accountability by ensuring that agency leadership has approved the policies and procedures the agency will follow. And they can also provide accountability in connection with individual rulemakings by creating an internal approval process by which agency leadership reviews proposed and final rules. Finally, they promote transparency by affording the public access to the agency's internal procedures pertaining to its rulemaking process.

In promulgating a rule on rulemakings, an agency may wish to solicit public input to inform the rule's development, even if such a rule is subject to 5 U.S.C. 553's exemption from notice-and-comment procedures as a rule of procedure, general statement of policy, or otherwise. In soliciting public input, agencies may wish to use mechanisms that facilitate more robust participation, including by underrepresented communities.[3] As the Administrative Conference has acknowledged in past recommendations, public comment can both provide valuable input from the public and enhance public acceptance of an agency's rules.[4]

An agency may also wish to publish its rule on rulemakings in the CFR. Doing so can enhance transparency and facilitate accountability. Importantly, publishing a rule on rulemakings in the CFR does not, by itself, make the rule on rulemakings judicially enforceable.[5]

This Recommendation does not seek to resolve whether, when, or on what legal bases a court might enforce a rule on rulemakings against an agency.[6]

Recommendation

1. Agencies should consider promulgating rules on rulemakings setting forth the policies and procedures they will follow in informal rulemaking under 5 U.S.C. 553.

2. In issuing rules on rulemakings, agencies should consider including provisions addressing the following topics (which reflect topics frequently covered in existing rules on rulemakings):

a. Procedures prior to the issuance of a notice of proposed rulemaking;

b. Procedures connected with the notice-and-comment process;

c. Procedures connected with the presidential review process, if applicable;

d. Procedures for handling post-comment period communications;

e. Internal approval procedures for issuing and finalizing rules; and

f. Procedures for reassessing existing rules.

The appendix gives examples of particular subtopics agencies may wish to consider under each of these topics.

3. Agencies should make rules on rulemakings available in a prominent, easy-to-find place on the portion of their websites dealing with rulemaking matters. Additionally, agencies should consider publishing them in the **Federal Register** and the *Code of Federal Regulations.* When posting rules on rulemakings on their websites, agencies should use techniques like linked tabs, pull-down menus, indexing, tagging, and sorting tables to ensure that relevant documents are easily findable. Agencies should also design their search engines to allow people to easily identify relevant documents.

4. In addition to issuing rules on rulemakings, agencies should consider explaining in accessible language how the rulemaking process works in order to educate the public. Such explanations might be integrated within a rule on rulemakings or might be contained in separate explanatory documents (*e.g.,* documents identifying frequently asked questions). When providing such explanations, an agency should, to the extent practicable, distinguish between procedures it intends to follow and material provided purely by way of background.

5. Agencies should consider a broad range of means of seeking public input on rules on rulemakings, even if the Administrative Procedure Act does not require it.

6. Agencies should consider the extent to which procedures required by a rule on rulemakings should be made internally waivable and, if so, by whom. For example, they might consider drafting a rule on rulemakings in a way that allows high-level agency officials to permit other officials to use alternative procedures.

Appendix

Non-Exhaustive List of Topics for Agencies To Consider Including Within Their Rules on Rulemakings

(a) Procedures Prior to the Issuance of a Notice of Proposed Rulemaking

Subtopic Examples:

(1) Regulatory planning;[7]

(2) Issuing advance notices of proposed rulemaking and obtaining feedback from members of the public using means other than the notice-and-comment process, such

[1] This Recommendation does not address rulemakings subject to the formal hearing requirements of the Administrative Procedure Act. *See* 5 U.S.C. 556–57.

[2] *Cf.* Admin. Conf. of the U.S., Recommendation 2019–1, *Agency Guidance Through Interpretive Rules,* 84 FR 38927 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2017–5, *Agency Guidance Through Policy Statements,* 82 FR 61734 (Dec. 29, 2017).

[3] *See, e.g.,* 2 U.S.C. 1534 (Unfunded Mandates Reform Act); 5 U.S.C. 609 (Regulatory Flexibility Act); Exec. Order No. 13,175, *Consultation and Coordination with Indian Tribal Governments,* 65 FR 67249 (Nov. 11, 2000).

[4] *See* Admin. Conf. of the U.S., Recommendation 92–1, *The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements,* 57 FR 30102 (July 8, 1992); *see also* Recommendation 2019–1, *supra* note 2; Recommendation 2017–5, *supra* note 2.

[5] *See, e.g.,* Health Ins. Ass'n of Am. v. Shalala, 23 F.3d 412, 423 (D.C. Cir. 1994) (stating that ''publication in the Code of Federal Regulations, or its absence'' is only ''a snippet of evidence of agency intent'' that the published pronouncement be given binding effect).

[6] Some rules on rulemakings include a statement that they do not create any substantive or procedural rights or benefits. This Recommendation does not address whether such disclaimers should be included or what legal effect they may have on judicial review. These questions cannot be answered in isolation from the broader question of when a rule on rulemakings is judicially enforceable.

[7] *See* Admin. Conf. of the U.S., Recommendation 2015–1, *Promoting Accuracy and Transparency in the Unified Agenda,* 80 FR 36757 (June 26, 2015).

as requests for information and focus groups; [8]

(3) Accepting, reviewing, and responding to petitions for rulemaking; [9]

(4) Considering options besides rulemaking;

(5) Performing ex ante regulatory analyses (*e.g.,* benefit-cost analysis and regulatory flexibility analysis); [10]

(6) Using plain language in regulatory drafting; [11]

(7) Preparing for potential judicial review of rulemakings, including deciding whether to make any of the provisions of a rule severable; [12]

(8) Conducting negotiated rulemaking; [13] and

(9) Establishing an effective date for rules.

(b) Procedures Connected With the Notice-and-Comment Process

Subtopic Examples:

(1) Materials to be published on *Regulations.gov* with the notice; [14]

(2) Minimum comment periods to be allowed; [15]

(3) Policies on ex parte contacts; [16]

(4) Handling external merits communications not filed as comments;

(5) Incorporating standards by reference; [17]

(6) Using social media to engage the public in rulemaking; [18]

(7) Obtaining feedback from American Indian tribes, other historically underrepresented or under-resourced groups, and state and local governments; [19]

(8) Posting, analyzing, and responding to public comments, including comments that may contain confidential commercial information, protected personal information, or other kinds of sensitive submissions; [20]

(9) Waiving or invoking of Administrative Procedure Act exemptions to notice and comment; [21] and

(10) Using interim final rules or direct final rules.[22]

(c) Procedures Connected With the Presidential Review Process, if Applicable

Subtopic Examples:

(1) Interacting with the Office of Information and Regulatory Affairs, the Office of the Federal Register, the Regulatory Information Service Center, the Small Business Administration's Office of Advocacy, and other offices with government-wide rulemaking responsibilities;

(2) Participating in the interagency review process; and

(3) Procedures related to international regulatory cooperation.[23]

(d) Procedures for Handling Post-Comment Period Communications

Subtopic Examples:

(1) Provisions pertaining to reply comments [24] and

(2) Handling late-filed comments.[25]

(e) Internal Approval Procedures for Issuing and Finalizing Rules

Subtopic Examples:

(1) Procedures for submitting rules to offices with legal, economic, and other responsibilities within the agency for review [26] and

(2) Procedures for submitting rules to the relevant agency official for final approval.

(f) Procedures for Reassessing Existing Rules

Subtopic Examples:

(1) Issuing regulatory waivers and exemptions; [27]

(2) Engaging in retrospective review of rules; [28]

(3) Maintaining and preserving rulemaking records, including transparency of such records and the handling of confidential commercial information, protected personal information, or other kinds of sensitive information contained therein; [29] and

(4) Handling rules that have been vacated or remanded without vacatur.[30]

Administrative Conference Recommendation 2020–2

Protected Materials in Public Rulemaking Dockets

Adopted December 16, 2020

As part of the rulemaking process, agencies create public rulemaking dockets, which consist of all rulemaking materials agencies have: (1) Proactively published online or (2) made available for public inspection in a reading room. Public rulemaking dockets include materials agencies generate themselves and comments agencies receive from the public. Their purpose is to provide the public with the information that informed agencies' rulemakings.[1]

The Administrative Conference has issued several recommendations to help agencies balance the competing considerations of transparency and confidentiality in managing their public rulemaking dockets.[2] This project builds on these recommendations.

The scope of the Recommendation is limited to personal information and confidential commercial information that agencies have decided to withhold from their public rulemaking dockets, which this Recommendation calls ''protected material.'' The Recommendation specifies how agencies should consider handling protected material. For purposes of this Recommendation, personal information is information about an individual including his or her education, financial transactions, medical history, criminal or employment history, or similarly sensitive information, and that contains his or her name, or the identifying number, symbol, or other identifying particular

[8] *See* Admin. Conf. of the U.S., Recommendation 2018–7, *Public Engagement in Rulemaking,* 84 FR 2146 (Feb. 6, 2019).

[9] *See* Admin. Conf. of the U.S., Recommendation 2014–6, *Petitions for Rulemaking,* 79 FR 75117 (Dec. 17, 2014).

[10] *See* Admin. Conf. of the U.S., Recommendation 2012–1, *Regulatory Analysis Requirements,* 77 FR 47801 (Aug. 10, 2012).

[11] *See* Admin. Conf. of the U.S., Recommendation 2017–3, *Plain Language in Regulatory Drafting,* 82 FR 61728 (Dec. 29, 2017).

[12] *See* Admin. Conf. of the U.S., Recommendation 2018–2, *Severability in Agency Rulemaking,* 83 FR 30685 (June 29, 2018).

[13] *See* Admin. Conf. of the U.S., Recommendation 2017–2, *Negotiated Rulemaking and Other Options for Public Engagement,* 82 FR 31040 (July 5, 2017).

[14] *See* Admin. Conf. of the U.S., Recommendation 2018–6, *Improving Access to Regulations.gov's Rulemaking Dockets,* 84 FR 2143 (Feb. 6, 2019).

[15] *See* Admin. Conf. of the U.S., Recommendation 2011–2, *Rulemaking Comments,* 76 FR 48791 (Aug. 9, 2011).

[16] *See* Admin. Conf. of the U.S., Recommendation 2014–4, ''*Ex Parte*'' *Communications in Informal Rulemaking,* 79 FR 35993 (June 25, 2014).

[17] *See* Admin. Conf. of the U.S., Recommendation 2011–5, *Incorporation by Reference,* 77 FR 2257 (Jan. 17, 2012).

[18] *See* Admin. Conf. of the U.S., Recommendation 2013–5, *Social Media in Rulemaking,* 78 FR 76269 (Dec. 17, 2013).

[19] *See* Recommendation 2018–7, *supra* note 8.

[20] *See* Admin. Conf. of the U.S., Recommendation 2020–2, *Protected Materials in Public Rulemaking Dockets,* 86 FR (approved Dec. 16, 2020); Admin. Conf. of the U.S., Recommendation 2011–1, *Legal Considerations in e-Rulemaking,* 76 FR 48789 (Aug. 9, 2011).

[21] *See* Recommendation 92–1, *supra* note 4.

[22] *See* Admin. Conf. of the U.S., Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemakings,* 60 FR 43108 (Aug. 18, 1995).

[23] *See* Admin. Conf. of the U.S., Recommendation 2011–6, *International Regulatory Cooperation,* 77 FR 2259 (Jan. 17, 2012).

[24] *See* Recommendation 2011–2, *supra* note 15.

[25] *See id.*

[26] *See* Admin. Conf. of the U.S., Recommendation 2019–5, *Agency Economists,* 84 FR 71349 (Dec. 27, 2019).

[27] *See* Admin. Conf. of the U.S., Recommendation 2017–7, *Regulatory Waivers and Exemptions,* 82 FR 61742 (Dec. 29, 2017).

[28] *See* Admin. Conf. of the U.S., Recommendation 2014–5, *Retrospective Review of Agency Rules,* 79 FR 75114 (Dec. 17, 2014).

[29] *See* Admin. Conf. of the U.S., Recommendation 2013–4, *Administrative Record in Informal Rulemaking,* 78 FR 41358 (July 10, 2013).

[30] *See* Admin. Conf. of the U.S., Recommendation 2013–6, *Remand Without Vacatur,* 78 FR 76272 (Dec. 17, 2013).

[1] The public rulemaking docket is distinguished from ''the administrative record for judicial review,'' which is intended to provide courts with a record for evaluating challenges to the rule, and the ''rulemaking record,'' which means all comments and materials submitted to agencies during comment periods and any other materials agencies considered during the course of the rulemaking. *See* Admin. Conf. of the U.S., Recommendation 2013–4, *The Administrative Record in Informal Rulemaking,* 78 FR 41358 (July 10, 2013).

[2] Recommendation 2011–1, *Legal Considerations in e-Rulemaking,* advises agencies to allow submitters to flag confidential information, including trade secrets, and advises agencies to devise procedures for reviewing and handling such information. Admin. Conf. of the U.S., Recommendation 2011–1, *Legal Considerations in e-Rulemaking,* ¶ 1, 76 FR 48789, 48790 (Aug. 9, 2011). Recommendation 2013–4, *supra* note 1, ¶ 11, advises agencies to develop guidance on managing and segregating protected information, such as confidential commercial information and sensitive personal information, while disclosing non-protected materials; *see also* Admin. Conf. of the U.S., Recommendation 89–7, *Federal Regulation of Biotechnology,* 54 FR 53494 (Dec. 29, 1988); Admin. Conf. of the U.S., Recommendation 82–1, *Exemption (b)(4) of the Freedom of Information Act,* 47 FR 30702 (July 15, 1982); Admin. Conf. of the U.S., Recommendation 80–6, *Intragovernmental Communications in Informal Rulemaking Proceedings,* 45 FR 86408 (Dec. 31, 1980).

assigned to the individual.[3] Confidential commercial information is commercial information that is customarily kept private, or at least closely held, by the person or business providing it.[4] Other types of information, such as national security information and copyrighted materials, are beyond the Recommendation's scope. The Recommendation is also limited to addressing procedures for protecting materials that agencies decide warrant protection. It is not intended to define the universe of protected materials. In particular, the Recommendation does not address any issue that may arise if agencies choose to rely on protected material in explaining their rulemakings, whether in notices of proposed rulemaking, regulatory impact analyses, or otherwise.

Agencies accept public comments for their public rulemaking dockets primarily through *Regulations.gov*, their own websites, and email. *Regulations.gov* and many agency websites that accept comments expressly notify the public that agencies may publish the information submitted in public comments.[5] When people submit comments to agencies, however, agencies typically do not immediately publish the comments. Instead, agencies generally take time to screen comments before publishing them. Most agencies perform at least some kind of screening during this period.

For all agencies, whether to withhold or disclose protected material is governed by various laws: Some mandate disclosure, some mandate withholding, and some leave agencies with substantial discretion in deciding whether to disclose. Although a full description of those laws is beyond the scope of this Recommendation, a brief overview of at least some of this body of law helps to identify the issues agencies face.

The Administrative Procedure Act requires agencies to ''give interested persons an opportunity to participate in rulemaking through submission of written data, views, or arguments.'' [6] The United States Court of Appeals for the D.C. Circuit has interpreted this provision to ordinarily require that agencies make publicly available the critical information—including studies, data, and methodologies—underlying proposed rules.[7]

The Privacy Act and the Trade Secrets Act place limits on the disclosure norm discussed above. Generally, the Privacy Act prevents agencies from disclosing any information about a person, such as medical records, educational background, and employment history, contained in agencies' systems of records, without that person's written consent.[8] The Trade Secrets Act generally prevents agencies from disclosing trade secrets and other kinds of confidential commercial information, such as corporate losses and profits.[9]

Both the Privacy Act and the Trade Secrets Act have exceptions. For the Privacy Act, the main exception relevant to this Recommendation is for information required to be released under the Freedom of Information Act (FOIA).[10] The Trade Secrets Act only has one exception, which covers any materials authorized to be disclosed by statute (including FOIA) or regulation.[11] Whether a particular piece of personal or confidential commercial information meets one of these exceptions often involves a complex determination that depends upon the exact type of information at issue and its contemplated use, and agencies must determine the applicability of the exceptions on a case-by-case basis. For example, whether FOIA authorizes disclosure of confidential commercial information may turn in part on whether agencies in receipt of the information assured submitters that the information would be withheld from the public.[12] If agencies offer assurances that they will not disclose confidential commercial information, agencies and submitters may rely on those assurances as a defense against compelled disclosure under FOIA. In many cases, agencies assure companies that they will not disclose such information in order to encourage companies to submit it.

Particular cases are governed by specific requirements of law, not broad categorical labels. But agencies often consider certain categories of personal information and confidential commercial information to be protected material (*e.g.,* trade secrets, social security numbers, bank account numbers, passport numbers, addresses, email addresses, medical information, and information concerning a person's finances).

There are many ways protected material may arrive at the agency in a rulemaking. A person might submit his or her own information, intentionally or unintentionally, and then ask the agency not to disclose it. A third party might submit another person's information, with or without that person's knowledge. A company might submit a document containing its own confidential commercial information, intentionally or unintentionally, with or without the agency's prior assurance of protection. Or a company might submit another company's or person's information. Depending on the information in question and the manner in which it was submitted, there may be issues of waiver of statutory protection. Such questions, like all questions regarding the substance of the laws governing protected material, are beyond this Recommendation's scope, but they illustrate the various considerations that agencies and the public often face in the submission and handling of such material.

This Recommendation proposes steps agencies can take to withhold protected materials from their public rulemaking dockets while still providing the public with the information upon which agencies relied in formulating proposed rules.[13]

Recommendation

Recommendations for All Agencies

1. To reduce the risk that agencies will inadvertently disclose protected material, agencies should describe what kinds of personal and confidential commercial information qualify as protected material and should clearly notify the public about their treatment of protected material. An agency's notifications should:

a. Inform members of the public that comments are generally subject to public disclosure, except when disclosure is limited by law;

b. Inform members of the public whether the agency offers assurances of protection from disclosure for their confidential commercial information and, if so, how to identify such information for the agency;

c. Provide guidance to the public concerning the submission of protected material that pertains to third parties, including instructions that the disclosure of some protected material may be prohibited by law;

d. Advise members of the public to review their comments for the material identified above in (c) and, if they find such material, to remove any such material that is not essential to the comment;

e. Inform members of the public that they may request, during the period between when a comment is received and when it is made public, that protected material they inadvertently submitted be withheld from the public rulemaking docket;

f. Inform members of the public that they may request, after the agency has published any comment, that protected material pertaining to themselves or to their dependents within the comment be removed from the public rulemaking docket; and

g. Inform members of the public that the agency reserves the right to redact or aggregate any part of a comment if the agency determines that it constitutes protected material, or may withhold a comment in its entirety if it determines that redaction or aggregation would insufficiently prevent the disclosure of this material.

2. Agencies should include the notifications described in Paragraph 1, or a link to those notifications, in at least the following places:

a. Within the rulemaking documents on which agencies request comments, such as a

[3] *See* Privacy Act of 1974 § 3, 5 U.S.C. 552a(a)(4).

[4] *See Food Mktg. Inst.* v. *Argus Leader Media,* 139 S. Ct. 2356, 2363 (2019); *see also* Exec. Order No. 12,600, *Predisclosure Notification Procedures for Confidential Commercial Information,* 52 FR 23781 (June 23, 1987).

[5] *See* Christopher Yoo, Protected Materials in Public Rulemaking Dockets 24 (Nov. 24, 2020) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/final-report-protected-materials-public-rulemaking-dockets.*

[6] 5 U.S.C. 553(c).

[7] *Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375, 393 (D.C. Cir. 1973). In addition to these public transparency requirements, there are a number of federal record-retention requirements of which agencies should be aware. *See, e.g.,* 44 U.S.C. 3301.

[8] 5 U.S.C. 552a(b).

[9] 18 U.S.C. 1905.

[10] 5 U.S.C. 552a(b)(2).

[11] *See CNA Fin. Corp.* v. *Donovan*, 830 F.2d 1132, 1137–43 (D.C. Cir. 1987).

[12] *See Food Mktg. Inst.,* 139 S. Ct. at 2361.

[13] Permitting the submission of anonymous and pseudonymous comments is one way that some agencies attempt to reduce the privacy risks commenters face when submitting protected material. Issues regarding the submission of anonymous and pseudonymous comments are being considered in an ongoing project of the Administrative Conference titled *Mass, Computer-Generated, and Fraudulent Comments* and are beyond the scope of this Recommendation.

notice of proposed rulemaking or an advance notice of proposed rulemaking;

b. On agencies' own comment submission forms, if agencies have them;

c. Within any automatic emails that agencies send acknowledging receipt of a comment;

d. On any part of agencies' websites that describe their rulemaking process or within any rules on rulemakings they may have, as described in Recommendation 2020–1, *Rules on Rulemakings;* and

e. Within any notices of public meetings pertaining to a rule.

3. The General Services Administration's eRulemaking Program Management Office should work with agencies that participate in *Regulations.gov* to include or refer to the notifications described in Paragraph 1 within any automated emails *Regulations.gov* sends acknowledging receipt of a comment.

4. If a submitter notifies an agency that the submitter inadvertently included protected material in the submitter's comment, the agency should act as promptly as possible to determine whether such material warrants withholding from the public rulemaking docket and, if so, withhold it from the public rulemaking docket, or, if already disclosed, remove it from the public rulemaking docket. If an agency determines that such material does not qualify as protected, it should promptly notify the submitter of this finding with a brief statement of reasons.

5. Agencies should allow third parties to request that protected material pertaining to themselves or a dependent be removed from the public rulemaking docket. Agencies should review such requests and, upon determining that the material subject to the request qualifies as protected material, should remove it from the public rulemaking docket as promptly as possible. If an agency determines that the material does not qualify as protected, it should promptly notify the requestor of this finding with a brief statement of reasons.

Recommendations for Agencies That Screen Comments for Protected Material Before Publication in the Public Rulemaking Docket

6. Agencies that screen comments for protected material before publication in the public rulemaking docket, either as required by law or as a matter of discretion, should redact the protected material and publish the rest of the comment. Redaction should be thorough enough to prevent the public from discerning the redacted material, but not so broad as to prevent the public from viewing non-protected material.

7. If redaction is not feasible within a comment, agencies should consider presenting the data in a summarized form.

8. If redaction is not feasible across multiple, similar comments, agencies should consider presenting any related information in an aggregated form. Agencies should work with data science experts and others in relevant disciplines to ensure that aggregation is thorough enough to prevent someone from disaggregating the information.

9. If the approaches identified in Paragraphs 6–8 would still permit a member of the public to identify protected material, agencies should withhold the comment in its entirety. When doing so, they should describe the withheld material for the public in as much detail as possible without compromising its confidentiality.

10. When deciding whether and how to redact, aggregate, or withhold protected material, agencies should explore using artificial intelligence-based tools to aid in identifying protected material. Agencies should consult with private sector experts and technology-focused agencies, such as the General Services Administration's Technology Transformation Service and the Office of Management and Budget's United States Digital Service, to determine which tools are most appropriate and how they can best be deployed given the agencies' resources.

Recommendations for Agencies That Offer Assurances of Protection From Disclosure of Confidential Commercial Information

11. Agencies that offer assurances of protection from disclosure of confidential commercial information should decide how they will offer such assurances. Agencies can choose to inform submitters, directly upon submission, that they will withhold confidential commercial information from the public rulemaking docket; post a general notice informing submitters that confidential commercial information will be withheld from the public rulemaking docket; or both.

12. Such agencies should adopt policies to help them identify such information. Agencies should consider including the following, either in tandem or as alternatives, as part of their policies, including within any rules on rulemakings they may have, as described in Recommendation 2020–1, *Rules on Rulemakings:*

a. Instructing submitters to identify clearly that the document contains confidential commercial information;

b. Instructing submitters to flag the particular text within the document that constitutes confidential commercial information; and

c. Instructing submitters to submit both redacted and unredacted versions of a comment that contains confidential commercial information.

Administrative Conference Statement #20

Agency Use of Artificial Intelligence

Adopted December 16, 2020

Artificial intelligence (AI) techniques are changing how government agencies do their work.[1] Advances in AI hold out the promise of lowering the cost of completing government tasks and improving the quality, consistency, and predictability of agencies' decisions. But agencies' uses of AI also raise concerns about the full or partial displacement of human decision making and discretion.

Consistent with its statutory mission to promote efficiency, participation, and fairness in administrative processes,[2] the Administrative Conference offers this Statement to identify issues agencies should consider when adopting or modifying AI systems and developing practices and procedures for their use and regular monitoring. The Statement draws on a pair of reports commissioned by the Administrative Conference,[3] as well as the input of AI experts from government, academia, and the private sector (some ACUS members) provided at meetings of the ad hoc committee of the Administrative Conference that proposed this Statement.

The issues addressed in this Statement implicate matters involving law, policy, finances, human resources, and technology. To minimize the risk of unforeseen problems involving an AI system, agencies should, throughout an AI system's lifespan, solicit input about the system from the offices that oversee these matters. Agencies should also keep in mind the need for public trust in their practices and procedures for use and regular monitoring of AI technologies.

1. Transparency

Agencies' efforts to ensure transparency in connection with their AI systems can serve many valuable goals. When agencies set up processes to ensure transparency in their AI systems, they should consider publicly identifying the processes' goals and the rationales behind them. For example, agencies might prioritize transparency in the service of legitimizing its AI systems, facilitating internal or external review of its AI-based decision making, or coordinating its AI-based activities. Different AI systems are likely to satisfy some transparency goals more than others. When possible, agencies should use metrics to measure the performance of their AI-transparency processes.

In setting transparency goals, agencies should consider to whom they should be

[1] There is no universally accepted definition of ''artificial intelligence,'' and the rapid state of evolution in the field, as well as the proliferation of use cases, makes coalescing around any such definition difficult. *See, e.g.,* John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115–232, 238(g), 132 Stat. 1636, 1697–98 (2018) (using one definition of AI); Nat'l Inst. of Standards & Tech., U.S. Leadership in AI: A Plan for Federal Engagement in Developing Technical Standards and Related Tools 7–8 (Aug. 9, 2019) (offering a different definition of AI). Generally speaking, AI systems tend to have characteristics such as the ability to learn to solve complex problems, make predictions, or undertake tasks that heretofore have relied on human decision making or intervention. There are many illustrative examples of AI that can help frame the issue for the purpose of this Statement. They include, but are not limited to, AI assistants, computer vision systems, biomedical research, unmanned vehicle systems, advanced game-playing software, and facial recognition systems as well as application of AI in both information technology and operational technology.

[2] *See* 5 U.S.C. 591.

[3] David Freeman Engstrom, Daniel E. Ho, Catherine M. Sharkey, & Mariano-Florentino Cuéllar, Government by Algorithm: Artificial Intelligence in Federal Administrative Agencies (Feb. 2020) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/government-algorithm-artificial-intelligence-federal-administrative-agencies;* Cary Coglianese, A Framework for Governmental Use of Machine Learning (Dec. 8, 2020) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/framework-governmental-use-machine-learning-final-report.*

transparent. For instance, depending on the nature of their operations, agencies might prioritize transparency to the public, courts, Congress, or their own officials.

The appropriate level or nature of transparency and interpretability in agencies' AI systems will also depend on context. In some contexts, such as adjudication, reason-giving requirements may call for a higher degree of transparency and interpretability from agencies regarding how their AI systems function. In other contexts, such as enforcement, agencies' legitimate interests in preventing gaming or adversarial learning by regulated parties could militate against providing too much information (or specific types of information) to the public about AI systems' processes. In every context, agencies should consider whether particular laws or policies governing disclosure of information apply.

In selecting and using AI techniques, agencies should be cognizant of the degree to which a particular AI system can be made transparent to appropriate people and entities, including the general public. There may be tradeoffs between explainability and accuracy in AI systems, so that transparency and interpretability might sometimes weigh in favor of choosing simpler AI models. The appropriate balance between explainability and accuracy will depend on the specific context, including agencies' circumstances and priorities.

The proprietary nature of some AI systems may also affect the extent to which they can be made transparent. When agencies' AI systems rely on proprietary technologies or algorithms the agencies do not own, the agencies and the public may have limited access to the information about the AI techniques. Agencies should strive to anticipate such circumstances and address them appropriately, such as by working with outside providers to ensure they will be able to share sufficient information about such a system. Agencies should not enter into contracts to use proprietary AI systems unless they are confident that actors both internal and external to the agencies will have adequate access to information about the systems.

2. Harmful Bias

At their best, AI systems can help agencies identify and reduce the impact of harmful biases.[4] Yet they can also unintentionally create or exacerbate those biases by encoding and deploying them at scale. In deciding whether and how to deploy an AI system, agencies should carefully evaluate the harmful biases that might result from the use of the AI system as well as the biases that might result from alternative systems (such as an incumbent system that the AI system would augment or replace). Because different types of bias pose different types of harms, the outcome of the evaluation will depend on agencies' unique circumstances and priorities and the consequences posed by those harms in those contexts.

AI systems can be biased because of their reliance on data reflecting historical human biases or because of their designs. Biases in AI systems can increase over time through feedback. That can occur, for example, if the use of a biased AI system leads to systematic errors in categorizations, which are then reflected in the data set or data environment the system uses to make future predictions. Agencies should be mindful of the interdependence of the models, metrics, and data that underpin AI systems.

Identifying harmful biases in AI systems can pose challenges. To identify and mitigate biases, agencies should, to the extent practical, consider whether other data or methods are available. Agencies should periodically examine and refresh AI algorithms and other protocols to ensure that they remain sufficiently current and reflect new information and circumstances relevant to the functions they perform.

Data science techniques for identifying and mitigating harmful biases in AI systems are developing. Agencies should stay up to date on developments in the field of AI, particularly on algorithmic fairness; establish processes to ensure that personnel that reflect various disciplines and relevant perspectives are able to inspect AI systems and their decisions for indications of harmful bias; test AI systems in environments resembling the ones in which they will be used; and make use of internal and external processes for evaluating the risks of harmful bias in AI systems and for identifying such bias.

3. Technical Capacity

AI systems can help agencies conserve resources, but they can also require substantial investments of human and financial capital. Agencies should carefully evaluate the short- and long-term costs and benefits of an AI system before committing significant resources to it. Agencies should also ensure they have access to the technical expertise required to make informed decisions about the type of AI systems they require; how to integrate those systems into their operations; and how to oversee, maintain, and update those systems.

Given the data science field's ongoing and rapid development, agencies should consider cultivating an AI-ready workforce, including through recruitment and training efforts that emphasize AI skills. When agency personnel lack the skills to develop, procure, or maintain AI systems that meet agencies' needs, agencies should consider other means of expanding their technical expertise, including by relying on tools such as the Intergovernmental Personnel Act,[5] prize competitions, cooperative research and development agreements with private institutions or universities, and consultation with external technical advisors and subject-matter experts.

4. Obtaining AI Systems

Decisions about whether to obtain an AI system can involve important trade-offs. Obtaining AI systems from external sources might allow agencies to acquire more sophisticated tools than they could design on their own, access those tools sooner, and save some of the up-front costs associated with developing the technical capacity needed to design AI systems.[6] Creating AI tools within agencies, by contrast, might yield tools that are better tailored to the agencies' particular tasks and policy goals. Creating AI systems within agencies can also facilitate development of internal technical capability, which can yield benefits over the lifetime of the AI systems and in other technological tasks the agencies may confront.

Certain government offices are available to help agencies with decisions and actions related to technology.[7] Agencies should make appropriate use of these resources when obtaining an AI system. Agencies should also consider the cost and availability of the technical support necessary to ensure that an AI system can be maintained and updated in a manner consistent with its expected life cycle and service mission.

5. Data

AI systems require data, often in vast quantities. Agencies should consider whether they have, or can obtain, data that appropriately reflect conditions similar to the ones the agencies' AI systems will address in practice; whether the agencies have the resources to render the data into a format that can be used by the agencies' AI systems; and how the agencies will maintain the data and link them to their AI systems without compromising security or privacy. Agencies should also review and consider statutes and regulations that impact their uses of AI as a potential collector and consumer of data.[8]

6. Privacy

Agencies have a responsibility to protect privacy with respect to personally identifiable information in AI systems. In a narrow sense, this responsibility demands that agencies comply with requirements related to, for instance, transparency, due process, accountability, and information quality and integrity established by the Privacy Act of 1974, Section 208 of the E-Government Act of 2002, and other applicable laws and policies.[9] More broadly, agencies should recognize and appropriately manage privacy risks posed by an AI system. Agencies should consider privacy risks

[4] While the term *bias* has a technical, statistical meaning, the Administrative Conference here uses the term more generally, to refer to common or systematic errors in decision making.

[5] 5 U.S.C. 3371–76.

[6] Agencies may also obtain AI systems that are embedded in commercial products. The considerations applicable to such embedded AI systems should reflect the fact that agencies may have less control over their design and development.

[7] Within the General Services Administration, for example, the office called 18F routinely partners with government agencies to help them build and buy technologies. Similarly, the United States Digital Service (which is within the Executive Office of the President) has a staff of technologists whose job is to help agencies build better technological tools. While the two entities have different approaches—18F acts more like an information intermediary and the Digital Service serves as an alternative source for information technology contracts—both could aid agencies with obtaining, developing, and using different AI techniques.

[8] *See, e.g.,* Paperwork Reduction Act, 44 U.S.C. 3501–20.

[9] *See, e.g.,* 5 U.S.C. 552a(e), (g), & (p); 44 U.S.C. 3501 note.

throughout the entire life cycle of an AI system from development to retirement and assess those risks, as well as associated controls, on an ongoing basis. In designing and deploying AI systems, agencies should consider using relevant privacy risk management frameworks developed through open, multi-stakeholder processes.[10]

7. Security

Agencies should consider the possibility that AI systems might be hacked, manipulated, fooled, evaded, or misled, including through manipulation of training data and exploitation of model sensitivities. Agencies must ensure not only that their data are secure, but also that their AI systems are trained on those data in a secure manner, make forecasts based on those data in a secure way, and otherwise operate in a secure manner. Agencies should regularly consider and evaluate the safety and security of AI systems, including resilience to vulnerabilities, manipulation, and other malicious exploitation. In designing and deploying AI systems, agencies should consider using relevant government guidance or voluntary consensus standards and frameworks developed through open, multi-stakeholder processes.[11]

8. Decisional Authority

Agencies should be mindful that most AI systems will involve human beings in a range of capacities—as operators, customers, overseers, policymakers, or interested members of the public. Human factors may sometimes undercut the value of using AI systems to make certain determinations. There is a risk, for example, that human operators will devolve too much responsibility to AI systems and fail to detect cases in which the AI systems yield inaccurate or unreliable determinations. That risk may be acceptable in some settings—such as when the AI system has recently been shown to perform significantly better than alternatives—but unacceptable in others.

Similarly, if agency personnel come to rely reflexively on algorithmic results in exercising discretionary powers, use of an AI system could have the practical effect of curbing the exercise of agencies' discretion or shifting it from the person who is supposed to be exercising it to the system's designer. Agencies should beware of such potential shifts of practical authority and take steps to ensure that appropriate officials have the knowledge and power to be accountable for decisions made or aided by AI techniques.

Finally, there may be some circumstances in which, for reasons wholly apart from decisional accuracy, agencies may wish to have decisions be made without reliance on AI techniques, even if the law does not require it. In some contexts, accuracy and fairness may not be the only relevant values at stake. In making decisions about their AI systems, agencies may wish to consider whether people will perceive the systems as unfair, inhumane, or otherwise unsatisfactory.[12]

9. Oversight

It is essential that agencies' AI systems be subject to appropriate and regular oversight throughout their lifespans. There are two general categories of oversight: External and internal. Agencies' mechanisms of internal oversight will be shaped by the demands of external oversight. Agencies should be cognizant of both forms of oversight in making decisions about their AI systems.

External oversight of agencies' uses of AI systems can come from a variety of government sources, including inspectors general, externally facing ombuds, the Government Accountability Office, and Congress. In addition, because agencies' uses of AI systems might lead to litigation in a number of circumstances, courts can also play an important role in external oversight. Those affected by an agency's use of an AI system might, for example, allege that use of the system violates their right to procedural due process.[13] Or they might allege that the AI system's determination violated the Administrative Procedure Act (APA) because it was arbitrary and capricious.[14] When an AI system narrows the discretion of agency personnel, or fixes or alters the legal rights and obligations of people subject to the agency's action, affected people or entities might also sue on the ground that the AI system is a legislative rule adopted in violation of the APA's requirement that legislative rules go through the notice-and-comment process.[15] Agencies should consider these different forms of potential external oversight as they are making and documenting decisions and the underlying processes for these AI systems.

Agencies should also develop their own internal evaluation and oversight mechanisms for their AI systems, both for initial approval of an AI system and for regular oversight of the system, taking into account their system-level risk management, authorization to operate, regular monitoring responsibilities, and their broader enterprise risk management responsibilities.[16] Successful internal oversight requires advance and ongoing planning and consultation with the various offices in an agency that will be affected by the agency's use of an AI system, including its legal, policy, financial, human resources, internally-facing ombuds, and technology offices. Agencies' oversight plans should address how the agencies will pay for their oversight mechanisms and how they will respond to what they learn from their oversight.

Agencies should establish a protocol for regularly evaluating AI systems throughout the systems' lifespans. That is particularly true if a system or the circumstances in which it is deployed are liable to change over time. In these instances, review and explanation of the system's functioning at one stage of development or use may become outdated due to changes in the system's underlying models. To enable that type of oversight, agencies should monitor and keep track of the data being used by their AI systems, as well as how the systems use those data. Agencies may also wish to secure input from members of the public or private evaluators to improve the likelihood that they will identify defects in their AI systems.

To make their oversight systems more effective, agencies should clearly define goals for their AI systems. The relevant question for oversight purposes will often be whether the AI system outperforms alternatives, which may require agencies to benchmark their systems against the status quo or some hypothetical state of affairs.

Finally, AI systems can affect how agencies' staffs do their jobs, particularly as agency personnel grow to trust and rely on the systems. In addition to evaluating and overseeing their AI systems, agencies should pay close attention to how agency personnel interact with those systems.

Administrative Conference Recommendation 2020–3

Agency Appellate Systems

Adopted December 16, 2020

In Recommendation 2016–4,[1] the Administrative Conference offered best practices for evidentiary hearings in administrative adjudications. Paragraph 26 recommended that agencies provide for ''higher-level review'' (or ''agency appellate review'') of the decisions of hearing-level adjudicators.[2] This Recommendation offers

[10] *See* Nat'l Inst. of Standards & Tech. Special Publication SP–800–37 revision 2, *Risk Management Framework for Information Systems and Organizations: A System Lifecycle Approach for Security and Privacy* (Dec. 2018); Office of Mgmt. & Budget, Exec. Off. of the President, Circular A–130, Managing Information as a Strategic Resource (July 28, 2016); *see also* Nat'l Inst. of Standards & Tech., *NIST Privacy Framework: A Tool for Improving Privacy Through Enterprise Risk Management, Version 1.0* (Jan. 16, 2020).

[11] *See supra* note 10; *see also* Office of Mgmt. & Budget, Exec. Off. of the President, M–21–06, Guidance for Regulation of Artificial Intelligence Applications (Nov. 17, 2020); Nat'l Inst. for Standards & Tech., *Framework for Improving Critical Infrastructure Cybersecurity* (Apr. 16, 2018).

[12] *Cf.* Admin. Conf. of the U.S., Recommendation 2018–3, *Electronic Case Management in Federal Administrative Adjudication,* 83 FR 30,686 (June 29, 2018) (suggesting, in the context of case management systems, that agencies consider implementing electronic systems only when they conclude that doing so would lead to benefits without impairing either the objective ''fairness'' of the proceedings or the subjective ''satisfaction'' of those participating in those proceedings).

[13] Courts would analyze such challenges under the three-part balancing framework from *Mathews* v. *Eldridge,* 424 U.S. 319, 335 (1976).

[14] *See* 5 U.S.C. 706(2)(A). Courts would likely review such challenges under the standard set forth in *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29, 43 (1983).

[15] *See* 5 U.S.C. 553(b)–(c).

[16] *See* Office of Mgmt. & Budget, Circular A–130, *supra* note 10; Office of Mgmt. & Budget, Exec. Office of the President, Circular A–123, Management's Responsibilities for Enterprise Risk Management and Internal Control (July 15, 2016).

[1] Admin. Conf. of the U.S., Recommendation 2016–4, *Evidentiary Hearings Not Required by the Administrative Procedure Act,* 81 FR 94,314 (Dec. 23, 2016).

[2] Recommendation 2016–4 addressed agency adjudications in which an evidentiary hearing, though not governed by the formal hearing provisions of the Administrative Procedure Act

best practices for such review. The Administrative Conference intends this Recommendation to cover appellate review of decisions resulting from (1) hearings governed by the formal hearing provisions of the Administrative Procedure Act (APA) and (2) evidentiary hearings that are not governed by those provisions but are required by statute, regulation, or executive order. Agencies may also decide to apply this Recommendation to appellate review of decisions arising from other hearings, depending on their level of formality.

Appellate review of hearing-level decisions can be structured in numerous ways. Two structures are most common. In the first, litigants appeal directly to the agency head, which may be a multi-member board or commission. In the second, litigants appeal to an appellate adjudicator or group of adjudicators—often styled as a board or council—sitting below the agency head. The appellate decision may be the agency's final action or may be subject to further appeal within the agency (usually to the agency head).

The Administrative Conference has twice before addressed agency appellate review. In Recommendations 68–6 and 83–3, it provided guidance to agencies when establishing new, and reviewing existing, organizational structures of appellate review.[3] Both recommendations focused on the selection of ''delegates''—individual adjudicators, review boards composed of multiple adjudicators, or panels composed of members of a multi-member agency—to exercise appellate review authority vested in agency heads (including boards and commissions). Recommendation 83–3 also addressed when agencies should consider providing appellate review as a matter of right and when as a matter of discretion, and, in the case of the latter, under what criteria.

With the exception of the appropriate standard for granting review, this Recommendation's focus lies elsewhere. It addresses, and offers best practices with respect to, the following subjects: First, an agency's identification of the purpose or objective served by its appellate review; second, its selection of cases for appellate review, when review is not required by statute; third, its procedures for review; fourth, its appellate decision-making processes; fifth, its management, administration, and bureaucratic oversight of its appellate system; and sixth, its public disclosure of information about its appellate system.[4]

Most importantly, this Recommendation begins by suggesting that agencies identify, and publicly disclose, the purpose(s) or objective(s) of their appellate systems. Appellate systems may have different purposes, and any given appellate system may have multiple purposes. Purposes or objectives can include the correction of errors, inter-decisional consistency of decisions, policymaking, political accountability, management of the hearing-level adjudicative system, organizational effectiveness and systemic awareness, and the reduction of litigation in federal courts. The identification of purpose is important both because it dictates (or should dictate) how an agency administers its appellate system—including what cases it hears and under what standards of review it decides them—and provides a standard against which an agency's performance can be evaluated.

This Recommendation proceeds from the recognition that agency appellate systems vary enormously—as to their purposes or objectives, governing substantive law, size, and resources—and that what may be a best practice for one system may not always be the best practice for another. In offering the best practices that follow, moreover, the Administrative Conference recognizes that (1) an agency's procedural choices may sometimes be constrained by statute and (2) available resources and personnel policies may dictate an agency's decision as to whether and how to implement the best practices that follow. The Administrative Conference makes this Recommendation subject to these important qualifications.

Recommendation

Objectives of Appellate Review

1. Agencies should identify the objective(s) of appellate review; disclose those objectives in procedural regulations; and design rules and processes, especially for scope and standard of review, to serve them.

Procedures for Appellate Review

2. Agencies should promulgate and publish procedural regulations governing agency appellate review in the **Federal Register** and codify them in the *Code of Federal Regulations.* These regulations should cover all significant procedural matters pertaining to agency appellate review, including but not limited to the following:

a. The objectives of the agency's appellate review system;

b. The timing and procedures for initiating review, including any available interlocutory review;

c. The standards for granting review, if review is discretionary;

d. The standards for permitting participation by interested persons and amici;

e. The standard of review;

f. The allowable and required submissions by litigants and their required form and contents;

g. The procedures and criteria for designating decisions as precedential and the legal effect of such designations;

h. The record on review and the opportunity, if any, to submit new evidence;

i. The availability of oral argument or other form of oral presentation;

j. The standards of and procedures for reconsideration and reopening, if available;

k. Any administrative or issue exhaustion requirements that must be satisfied before seeking agency appellate or judicial review, including whether agency appellate review is a mandatory prerequisite to judicial review;

l. Openness of proceedings to the public and availability of video or audio streaming or recording;

m. In the case of multi-member appellate boards, councils, and similar entities, the authority to assign decision-making authority to fewer than all members (*e.g.,* panels); and

n. Whether seeking agency appellate review automatically stays the effectiveness of the appealed agency action until the appeal is resolved (which may be necessary for appellate review to be mandatory, see 5 U.S.C. 704), and, if not, how a party seeking agency appellate review may request such a stay and the standards for deciding whether to grant it.

3. Agencies should include in the procedural regulations governing their appellate programs: (a) A brief statement or explanation of each program's review authority, structure, and decision-making components; and (b) for each provision based on a statutory source, an accompanying citation to that source.

4. When revising existing or adopting new appellate rules, agencies should consider the appellate rules (Rules 400–450) in the Administrative Conference's *Model Rules of Agency Adjudication* (rev. 2018).

5. When materially revising existing or adopting new appellate rules, agencies should use notice-and-comment procedures or other mechanisms for soliciting public input, notwithstanding the procedural rules exemption of 5 U.S.C. 553(b)(A), unless the costs clearly outweigh the benefits of doing so.

Case Selection for Appellate Review

6. Based on the agency-specific objectives of appellate review, agencies should decide whether the granting of review should be mandatory or discretionary (assuming they have statutory authority to decide); if discretionary, the criteria for granting review should track the objectives of the appellate system, and they should be published in the procedural regulations.

7. Agencies should consider implementing procedures for sua sponte appellate review of non-appealed hearing-level decisions, as well as for the referral of cases or issues by hearing-level adjudicators to the appellate entity for interlocutory review.

Appellate Decision-Making Processes and Decisions

8. Whenever possible, agencies should consider maintaining electronic case

(APA) (5 U.S.C. 554, 556–57), is required by statute, regulation, or executive order. Those adjudications, which are often as formal as APA adjudications in practice, far outnumber so-called APA adjudications. Although Recommendation 2016–4 addresses only non-APA adjudications, most of its best practices are as applicable to APA adjudications as non-APA adjudications. Some such practices, in fact, are modeled on the APA's formal hearing provisions.

[3] Admin. Conf. of the U.S., Recommendation 83–3, *Agency Structures for Review of Decisions of Presiding Officers Under the Administrative Procedure Act,* 48 FR 57,461 (Dec. 30, 1983); Admin. Conf. of the U.S., Recommendation 68–6, *Delegation of Final Decisional Authority Subject to Discretionary Review by the Agency,* 38 FR 19,783 (July 23, 1973). Both recommendations concerned only the review of decisions in proceedings governed by the formal hearing provisions of the APA. Their principles, though, are not so confined.

[4] Christopher J. Walker & Matthew Lee Wiener, Agency Appellate Systems (Dec. 14, 2020) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/final-report-agency-appellate-systems.*

management systems that ensure that hearing records are easily accessible to appellate adjudicators. Such systems may include the capability for electronic filing.

9. Although the randomized assignment of cases to appellate adjudicators is typically an appropriate docketing method for an agency appellate system, agencies should consider the potential benefits of sorting and grouping appeals on the appellate docket, such as reduced case processing times and more efficient use of adjudicators', staff attorneys', and law clerks' skills and time. Criteria for sorting and grouping cases may include the size of a case's record, complexity of a case's issues, subject matter of a case, and similarity of a case's legal issues to those of other pending cases.

10. Consistent with the objectives of the agency's appellate system and in light of the costs of time and resources, agencies should consider adopting an appellate model of judicial review in which the standard of review is not de novo with respect to findings of fact and application of law to facts. For similar reasons, many agencies should consider limiting the introduction of new evidence on appeal that is not already in the administrative record from the hearing-level adjudication.

11. Taking agency resources into account, agencies should emphasize concision, readability, and plain language in their appellate decisions and explore the use of decision templates, summary dispositions, and other quality-improving measures.

12. Agencies should establish clear criteria and processes for identifying and selecting appellate decisions as precedential, especially for appellate systems with objectives of policymaking or inter-decisional consistency.

13. Agencies should assess the value of oral argument and amicus participation in their appellate system based on the agencies' identified objectives for appellate review and should establish rules governing both. Criteria that may favor oral argument and amicus participation include issues of high public interest; issues of concern beyond the parties to the case; specialized or technical matters; and a novel or substantial question of law, policy, or discretion.

Administration, Management, and Bureaucratic Oversight

14. Agency appellate systems should promptly transmit their precedential decisions to all appellate program adjudicators and, directly or through hearing-level programs, to hearing-level adjudicators (as appropriate). Appellate programs should include in their transmittals, when feasible, brief summaries of the decision.

15. Agencies should notify their adjudicators of significant federal court decisions reviewing the agencies' decisions and, when providing notice, explain the significance of those decisions to the program. As appropriate, agencies should notify adjudicators if the agency will not acquiesce in a particular decision of the federal courts of appeals.

16. Agencies in which decision making relies extensively on their own precedential decisions should consider preparing or having prepared indexes and digests—with annotations and comments, as appropriate—to identify those decisions and their significance.

17. As appropriate, agency appellate systems should communicate with agency rule-writers and other agency policymakers—and institutionalize communication mechanisms—to address whether recurring issues in their decisions should be addressed by rule rather than precedential case-by-case adjudication.

18. The Office of the Chairman of the Administrative Conference should provide for, as authorized by 5 U.S.C. 594(2), the ''interchange among administrative agencies of information potentially useful in improving'' agency appellate systems. The subjects of interchange might include electronic case management systems, procedural innovations, quality-assurance reviews, and common management problems.

Public Disclosure and Transparency

19. Agencies should disclose on their websites any rules (sometimes styled as ''orders''), and statutes authorizing such rules, by which an agency head has delegated review authority to appellate adjudicators.

20. Regardless of whether the Government in the Sunshine Act (5 U.S.C. 552b) governs their appellate review system, agencies should consider announcing, livestreaming, and maintaining video recordings on their websites of appellate proceedings (including oral argument) that present significant legal and policy issues likely to be of interest to regulated parties and other members of the public. Brief explanations of the issues to be addressed by oral argument may usefully be included in website notices of oral argument.

21. Agencies should include on their websites brief and accessibly written explanations as to how their internal decision-making processes work and, as appropriate, include links to explanatory documents appropriate for public disclosure. Specific subjects that agencies should consider addressing include: The process of assigning cases to adjudicators (when fewer than all of the programs' adjudicators participate in a case), the role of staff, and the order in which cases are decided.

22. When posting decisions on their websites, agencies should distinguish between precedential and non-precedential decisions. Agencies should also include a brief explanation of the difference.

23. When posting decisions on their websites, agencies should consider including, as much as practicable, brief summaries of precedential decisions and, for precedential decisions at least, citations to court decisions reviewing them.

24. Agencies should include on their websites any digests and indexes of decisions they maintain. It may be appropriate to remove material exempt from disclosure under the Freedom of Information Act or other laws.

25. Agencies should affirmatively solicit feedback concerning the functioning of their appellate systems and provide a means for doing so on their websites.

Administrative Conference Recommendation 2020–4

Government Contract Bid Protests Before Agencies

Adopted December 17, 2020

Federal law establishes policies and procedures governing how federal executive agencies procure supplies and services.[1] The primary source of these policies and procedures is the Federal Acquisition Regulation (FAR),[2] which applies to all executive-agency acquisitions of supplies and services with appropriated funds by and for the use of the federal government, unless expressly excluded. Other relevant policies and procedures are found in federal statutes and agencies' own procurement rules.

If a vendor believes a federal executive agency has not complied with the law or the terms of a solicitation, it may file what is called a bid protest—that is, a written objection to a government agency's conduct in acquiring supplies and services for its direct use or benefit.[3] Responding to bid protests can require agencies to reevaluate their procurement processes and, sometimes, make improvements. That, in turn, results in more competitive, fairer, and more transparent procurement processes, benefiting vendors, agencies, and ultimately the public.

To file a bid protest, an actual or prospective vendor must show that it is an ''interested party''—meaning that its direct economic interest would be adversely affected by the award of, or failure to award, the contract in question[4]—and that it suffered prejudice because of an error in the procurement process. Ordinarily, vendors who meet those requirements may file bid protests in any of three forums: (1) The procuring agency,[5] (2) the Government Accountability Office (GAO),[6] or (3) the

[1] *See* Federal Acquisition Regulation, 48 CFR ch. 1; *see also* Competition in Contracting Act of 1984, Public Law 98–369, div. B, tit. VII, 98 Stat. 494, 942–85 (codified, as amended, in various parts of the U.S. Code); Federal Acquisition Streamlining Act of 1994, Public Law 103–355, 108 Stat. 3243; Federal Acquisition Reform Act of 1996, Public Law 104–106, 110 Stat. 186 (later renamed the Clinger-Cohen Act of 1996); Exec. Order No. 12,979, *Agency Procurement Protests,* 60 FR 55,171 (Oct. 25, 1995).

[2] *See* 48 CFR ch. 1.

[3] *See* Admin. Conf. of the U.S., Recommendation 95–5, *Government Contract Bid Protests,* 60 FR 43,108, 43,113 (Aug. 18, 1995).

[4] *See* 4 CFR 21.0(a)(1) (defining ''interested party'' for purposes of bid protest proceedings before the Government Accountability Office); 48 CFR 33.101 (defining ''interested party'' for purposes of bid protest proceedings before procuring agencies); *CliniComp Int'l, Inc.* v. *United States*, 904 F.3d 1353, 1358 (Fed. Cir. 2018) (defining ''interested party'' for purposes of 28 U.S.C. 1491(b), which covers actions in the Court of Federal Claims). There are some instances in which Congress has restricted the ability to file a protest, regardless of whether a vendor is an ''interested party.'' See, *e.g.,* 41 U.S.C. 4106(f) (limiting the ability to protest the issuance or proposed issuance of a task or delivery order); 48 CFR 16.505(a)(10) (same).

[5] *See* 48 CFR 33.103.

[6] *See* 31 U.S.C. 3552(a), 3553(a). For civilian agencies, GAO has exclusive jurisdiction over protests of task and delivery orders in excess of $10 million, unless the protest is on the grounds that

United States Court of Federal Claims (COFC),[7] and depending on where the protest is initiated, may be able to file protests in series. For example, a protest may be filed first at the agency, then (if unsuccessful at the agency) at GAO, and then (if again unsuccessful) at COFC.[8] The procedural tools available in a given forum, along with other strategic and cost considerations, typically drive vendors' decisions about where to file their bid protests.

Bid protests filed with procuring agencies are commonly referred to as agency-level protests. Agency-level protests have important benefits for the public, contractors, procuring agencies, and COFC and GAO. By ''provid[ing] for inexpensive, informal, procedurally simple, and expeditious resolution of protests,'' [9] agency-level protest mechanisms allow small businesses (among other vendors) to affordably contest agencies' procurement decisions. They also give procuring agencies the chance to review and improve their own procurement practices. And they funnel some protests away from COFC and GAO, reducing the likelihood that the number of protests will overwhelm those institutions.

Vendors, however, seldom file agency-level protests. Although there is little data on the number of agency-level protests filed each year, available evidence suggests that substantially more protests are filed with COFC and GAO each year than with procuring agencies.[10] There are several reasons why vendors may forego agency-level protests. Those reasons implicate the themes of transparency, predictability, and accountability.

First, some vendors report shying away from agency-level protests because they perceive the agency as unlikely to change its decision.[11] Sometimes, for instance, the official responsible for soliciting or awarding a procurement contract is also responsible for handling any agency-level protests that are filed regarding the procurement. This perception of a pre-judgment by the agency may cause some vendors to file their protests at GAO or COFC, rather than at the agency level.

Second, some vendors report that they view agency-level protest processes as opaque.[12] Agencies do not publish or provide comprehensive data on their bid protest decisions. And the FAR and agency-specific bid protest rules establish few hard-and-fast requirements for the process. For example, although the FAR states that ''[a]gencies shall make their best efforts to resolve agency protests within 35 days after [an agency-level protest] is filed,'' [13] that language is hortatory and does not establish any binding deadlines for agency decisions. Nothing in the FAR does. The failure to provide for any binding deadlines distinguishes the FAR from other federal procurement statutes, such as the Contract Disputes Act,[14] which sets or requires contracting officers to set firm deadlines for deciding most claims [15] and provides that the passage of the deadline for a claim means the claim is deemed denied.[16]

Third, some vendors report being dissuaded by their inability to compel production of the procurement record as part of an agency-level protest.[17] The FAR gives disappointed offerors the right to an agency debriefing—a procedure whereby contracting personnel provide offerors with an explanation of the agency's evaluation process and an assessment of the offerors' proposals. But nothing in the FAR guarantees vendors the right to view the procurement record itself. The FAR provides only that agencies ''*may* exchange relevant information'' with agency-level protesters.[18] By contrast, vendors who file bid protests at GAO may demand to see the entire record of the procurement, and procuring agencies must respond to such requests within twenty-five days and produce the responsive documents within thirty days (unless they are withheld for a valid reason).[19]

Finally, some vendors deem agency-level protests to be too risky.[20] In many cases, vendors who do not obtain relief through an agency-level protest will seek relief from GAO by pursuing their protest in that forum. But GAO's deadline for filing such ''follow-on protests'' often begins to run as soon as the vendor has actual or constructive notice of some ''adverse agency action,'' which can occur before a protester receives the decision in its agency-level protest.[21] In this way, delayed notification about an agency's decision in a bid protest can seriously prejudice protesters' rights at GAO.[22] This causes some vendors to forego agency-level protests altogether.[23]

The perception that agency-level protests lack transparency, predictability, and accountability also makes it more likely that protesters who do file at the agency level and whose protests are denied will file follow-on protests with GAO or COFC. Such follow-on protests not only tax the limited resources of GAO and COFC, but also can disrupt activities at procuring agencies. For instance, just as the filing of an agency-level protest automatically prohibits the contract from being awarded or performed until the agency denies or dismisses the protest and takes some adverse action,[24] a follow-on protest at GAO may automatically prevent the contract from being awarded or performed (if the requisite filing deadlines are met) until GAO denies or dismisses the protest.[25] Thus, when an agency-level protest is followed by another protest at GAO, delays in procurements can be substantial.

Protesters, agencies, and the public would all benefit from an improved agency-level protest system. Protesters would benefit because agency-level protests are typically the least formal and least costly types of bid protest procedures. Agencies would benefit from an improved agency-level protest system because greater use of agency-level protests means more agency control over the timing and conduct of protests and more opportunities for agencies to superintend their own procurement processes. And the public would benefit from more competitive, fairer, and more transparent agency procurements.

Because an improved agency-level protest system is of significant value to contractors, agencies, and the public, this Recommendation identifies changes to make it more likely vendors will avail themselves of agency-level protest procedures. The recommended changes reflect three overarching principles—transparency, simplicity, and predictability—meant to address contractors' principal concerns about agency-level protest systems.

Recommendation

Identification of Decisions Subject to Agency-Level Protests

1. Agencies should clearly identify which categories of procurement decisions may or may not be made the subjects of agency-level protests.

Transparency for the Process and Personnel for Agency-Level Protests

2. Agencies should formalize and compile in a document that is publicly available online the procedures they apply in adjudicating agency-level protests. In so doing, they should be guided by the principles set out in Recommendation 2018–5, *Public Availability of Adjudication Rules.*

3. Agencies should clearly identify who within the agency will adjudicate an agency-level protest. They should consider designating at least one Agency Protest Official (APO)—a person who specializes in handling agency-level protests—to oversee and coordinate agency-level protests and hear protests brought to a level above the contracting officer. Agencies lacking the resources to designate their own APO might consider sharing an APO with other agencies.

Notice of the Timeline for Agency-Level Protests

4. Agencies should consider adopting presumptive timelines for agency-level

the order increases the scope, period, or maximum value of the contract. *See* 41 U.S.C. 4106(f); 48 CFR 16.505(a)(10).

[7] *See* 28 U.S.C. 1491(b).

[8] *See* Admin. Conf. of the U.S., Info. Interchange Bull. No. 007, Agency Bid Protests (June 2020), *https://www.acus.gov/fact-sheet/iib-007-agency-bid-protests.*

[9] *See* Exec. Order. No. 12,979, *Agency Procurement Protests,* 60 FR 55,171, 55,171 (Oct. 25, 1995).

[10] *See* Christopher Yukins, Stepping Stones to Reform: Making Agency-Level Bid Protests Effective for Agencies and Bidders by Building on Best Practices from Across the Federal Government 12–13 (May 1, 2020) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/agency-level-bid-protests-final-report.*

[11] *Id.* at 23.

[12] *Id.* at 13.

[13] 48 CFR 33.103(g).

[14] 41 U.S.C. 7101–09.

[15] *See id.* § 7103(f)(1)–(2).

[16] *See id.* § 605(c)(5).

[17] Yukins, *supra* note 10, at 39.

[18] 48 CFR 33.103(g) (italics added).

[19] 4 CFR 21.3(c)–(d); 48 CFR 33.104(a).

[20] Yukins, *supra* note 10, at 31.

[21] *See* 4 CFR 21.0(e), 21.2.

[22] *See* Yukins, *supra* note 10, at 13–14, 18–19.

[23] *See id.* at 23.

[24] 48 CFR 33.103(f). Under certain circumstances, the agency can override the regulatory stay for agency-level protests. *See* 48 CFR 33.103(f)(1), (f)(3).

[25] 31 U.S.C. 3553(c)(1), (d)(3). Under certain circumstances, the agency can override the statutory stay for protests to GAO. *See* 31 U.S.C. 3553(c)–(d); 48 CFR 33.104(b)–(c).

protests, similar to the ones under the Contract Disputes Act. Agencies should also make best efforts to notify protesters of the timelines applicable to their agency-level protests.

5. Agencies should clearly and immediately provide written notice to protesters of any adverse agency action affecting the rights of the protester under the challenged procurement. Agency rules should provide that protests are deemed denied after a specified number of days without a decision and that agencies may grant case-specific extensions based on identified criteria.

Compiling the Record and Making It Available

6. Agencies should make available to protesters as much of the procurement record as is feasible. To address confidential information in the record, agencies should consider using tools such as enhanced debriefings.

7. Agencies should consider adopting a thirty-day deadline, running from the date a protest is filed, for providing protesters with as much of the procurement record as is feasible.

Protecting Against Adverse Consequences

8. Although the Federal Acquisition Regulation (FAR) prohibits the award of a contract or continued performance under an awarded contract during an agency-level protest, agencies should provide for a short extension of the stay after a final decision in an agency-level bid protest as permitted by the FAR. The short extension should be of sufficient duration (*e.g.,* five days) to give the protester time to bring a follow-on protest at the Government Accountability Office (GAO) or the United States Court of Federal Claims after the agency's decision.

9. Congress should provide that, if a protester promptly files a GAO protest after an adverse decision in an agency-level protest, the agency shall not award the contract or commence performance under the contract during the pendency of the GAO protest, subject to potential override in urgent and compelling circumstances.

10. GAO should amend its bid protest procedures to ensure that follow-on protests at GAO are handled on an expedited basis, to the extent feasible.

Publishing Data on Agency-Level Protests

11. Agencies should collect and annually publish data about the bid protests they adjudicate. To the extent feasible, the data should at least include what the GAO currently provides in its annual reports about the bid protests it adjudicates (*e.g.,* the number of bid protests filed with the agency; the effectiveness rate of agency-level bid protests (the ratio of protests sustained or in which corrective action is afforded versus total agency-level protests filed); the number of merits decisions by the agency; the number of decisions sustaining the protest; the number of decisions denying the protest; and the time required for bid protests to be resolved).

Administrative Conference Recommendation 2020–5

Publication of Policies Governing Agency Adjudicators

Adopted December 17, 2020

[**NOTE:** Appendix B referenced in this Recommendation has been omitted from this notice because of the inaccessible images it contains. The full appendix may be found online at *https://www.acus.gov/recommendation/publication-policies-governing-agency-adjudicators.*]

Federal agency officials throughout the country preside over hundreds of thousands of adjudications each year.[1] As the Administrative Conference has previously observed, litigants, their lawyers, and other members of the public benefit from having ready online access to procedural rules, decisions, and other key materials associated with adjudications.[2] They also benefit from having ready online access to the policies and practices by which agencies appoint and oversee administrative law judges and other adjudicators. The availability of these policies and practices helps inform the public about, among other things, any actions agencies have taken to ensure the impartiality of administrative adjudicators [3] and promotes an understanding of adjudicators' constitutional status under the Appointments Clause and other constitutional provisions. The Administrative Conference acknowledges ongoing litigation regarding the constitutional status of many agency adjudicators and the continuing validity of the means and circumstances of their appointment and removal.[4]

Agencies may benefit from disclosures about agency adjudicators because it allows them to compare their own policies with those made publicly available by other agencies. Agencies' proactive disclosures, which may sometimes already be required under the Freedom of Information Act and the E-Government Act, may also be more cost-effective than agencies' responding to individual requests for information.[5]

Like other recent recommendations regarding adjudicators,[6] this Recommendation pertains to officials who preside over (1) hearings governed by the formal hearing provisions of the Administrative Procedure Act (APA) [7] and (2) hearings that are not governed by those provisions but are required by statute, regulation, or executive order. It also covers officials (agency heads excluded) who review hearing-level adjudicators' decisions on appeal. For ease of reference, this Recommendation refers to the covered adjudicators as either ''administrative law judges'' (ALJs) or ''administrative judges'' (AJs).[8] Agencies may decide to include on their websites the disclosures identified in this Recommendation for other adjudicators, depending on the level of formality of the proceedings over which they preside and whether they serve as full-time adjudicators. Agencies may also decide to make similar disclosures with respect to agency heads if their websites do not already provide sufficient information.

This Recommendation focuses on policies and practices relating to adjudicators that agencies should disclose, including those addressing appointment and qualifications; compensation (including salaries, bonuses, and performance incentives); duties and responsibilities; supervision and assignment of work; position within agencies' organizational hierarchies; methods of evaluating performance; limitations on ex parte communications and other policies ensuring separation between adjudicative and enforcement functions; recusal and disqualification; the process for review of adjudications; and discipline and removal.

Many of the policies and practices applicable to ALJs governing these matters are already publicly available because they are in the APA, Office of Personnel Management rules, or other legal authorities.[9] Nevertheless, agencies that employ ALJs can take steps to improve the public's access to this information.

ALJs, in any case, make up a small portion of federal adjudicators. There are many more AJs than ALJs.[10] AJs are regulated by a complex mix of statutory provisions, including civil service laws, agency rules codified in the *Code of Federal Regulations,* and agency-specific policies that take a variety of forms. Many types of information about AJs reside in these sources, but they may be difficult to find.[11] Some relevant

[1] *See* Admin. Conf. of the U.S., Recommendation 2016–2, *Aggregate Agency Adjudication,* 81 FR 40,260, 40,260 (June 21, 2016).

[2] Admin. Conf. of the U.S., Recommendation 2018–5, *Public Availability of Adjudication Rules,* 84 FR 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017–1, *Adjudication Materials on Agency Websites,* 82 FR 31,039 (July 5, 2017).

[3] *Cf.* Admin. Conf. of the U.S., Recommendation 2018–4, *Recusal Rules for Administrative Adjudicators,* 84 FR 2139 (Feb. 6, 2019).

[4] *See, e.g., Lucia* v. *SEC,* 138 S. Ct. 2044 (2018); *Arthrex* v. *Smith & Nephew,* 941 F.3d 1320 (Fed. Cir. 2019), cert. granted, __S. Ct. __(Oct. 13, 2020) (No. 19–1434).

[5] FOIA Improvement Act of 2016, Public Law 114–185, 2, 130 Stat. 538, 538 (amending 5 U.S.C. 552(a)(2)); E-Government Act of 2002, Public Law 140–347, 206, 116 Stat. 2899, 2916 (amending 44 U.S.C. 3501).

[6] *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2018–4, *Recusal Rules for Administrative Adjudicators,* 84 FR 2139 (Feb. 6, 2019).

[7] *See* 5 U.S.C. 554, 556–57.

[8] The vast majority of ALJs work at the Social Security Administration. AJs work at many different agencies under a variety of titles, including not only ''Administrative Judge'' but also, by way of example, ''Hearing Officer,'' ''Immigration Judge,'' ''Veterans Law Judge,'' ''Administrative Patent Judge,'' and ''Administrative Appeals Judge.''

[9] 5 U.S.C. 554, 557, 3105, 4301, 5372, 7521; 5 CFR pt. 930, subpt. B; Exec. Order No. 13,843, *Executive Order Excepting Administrative Law Judges from the Competitive Service,* 83 FR 32,755 (July 13, 2018) (issued July 10, 2018).

[10] Kent Barnett et al., Non-ALJ Adjudicators in Federal Agencies: Status, Selection, Oversight, and Removal 1 (Sept. 24, 2018) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/non-alj-adjudicators-federal-agencies-status-selection-oversight-and-removal-1.*

[11] Leigh Anne Schriever, Public Availability of Information About Adjudicators 10 (Nov. 23, 2020)

sources may not be publicly available, including internal administrative and personnel manuals, position descriptions, and labor agreements. This is particularly true with respect to certain kinds of policies, such as those relating to compensation and performance incentives.[12] Of course, the Administrative Conference recognizes that some of these agency policies and practices may qualify for an exemption under the Freedom of Information Act,[13] Privacy Act,[14] or other laws and executive-branch policies.

Agency websites are the most helpful location for agencies to make relevant policies and practices publicly available. Individuals most naturally seek information about administrative policies and practices on agencies' websites. Agencies can situate information about their adjudicators in a logical and easily identifiable place on their websites and structure their websites to synthesize policies in plain language and link to information from many different sources.[15]

This Recommendation encourages agencies to post on their websites clear and readily accessible descriptions of the policies governing the appointment and oversight of ALJs and AJs, and to include links to relevant legal documents. How, exactly, they should do so will of course depend on the specific features of their adjudicative programs and their institutional needs.

Recommendation

1. Each adjudicative agency should prominently display on its website a short, straightforward description of all generally applicable policies and practices, along with the legal authority, governing the appointment and oversight of Administrative Law Judges (ALJs) and Administrative Judges (AJs), including, as applicable, those that address:

a. Procedures for assessing, selecting, and appointing candidates for adjudicator positions and the legal authority under which such appointments are made;

b. Placement of adjudicators within agencies' organizational hierarchies;

c. Compensation structure and performance incentives, such as bonuses, nonmonetary awards, and promotions;

d. Procedures for assigning cases;

e. Assignment, if any, of nonadjudicative duties to adjudicators;

f. Limitations on ex parte communications, including between adjudicators and other agency officials, related to the disposition of individual cases, as well as other policies ensuring a separation of adjudication and enforcement functions;

g. Standards for recusal by and disqualification of adjudicators;

h. Administrative review of adjudicators' decisions;

i. Supervision of adjudicators by higher-level officials;

j. Evaluation of adjudicators, including quantitative and qualitative methods for appraising adjudicators' performances, such as case-processing goals, if any; and

k. Discipline and removal of adjudicators.

Agencies may choose not to provide access to policies covered by a Freedom of Information Act exemption.

2. On the same web page as the information described in Paragraph 1 appears, each adjudicative agency should post links to key legal documents or, when links are not available, citations to such documents. These documents may include (a) federal statutes, including relevant provisions of the Administrative Procedure Act (APA) and other laws applicable to ALJs and AJs; (b) agency-promulgated rules regarding adjudicators, including Office of Personnel Management rules applicable to ALJs; (c) publicly available agency-promulgated guidance documents relating to adjudicators, including manuals, bench books, and other explanatory materials; (d) delegations of authority; and (e) position descriptions. To the extent that some policies concerning adjudicators may be a matter of custom, such as assignment of nonadjudicative duties, each adjudicative agency should consider documenting those policies to make them publicly accessible to the extent practicable.

3. The web page containing the information described in Paragraphs 1 and 2 should present the materials in a clear, logical, and comprehensive fashion. One possible method of presenting this information appears in Appendix A. The appendix gives one example for ALJs and another for AJs.

4. If an agency's mission consists exclusively or almost exclusively of conducting adjudications, the agency should provide a link to the web page containing the information described in Paragraphs 1 and 2 on the agency's homepage. If conducting adjudications is one of an agency's many functions, the agency should provide a link to these materials from a location on the website that is both dedicated to adjudicative materials and logical in terms of a user's likelihood of finding the documents in the selected location. One example would be an enforcement or adjudication page or the homepage for the component in which a particular category of adjudicators works. Citations to agency web pages that currently provide this information in a way that makes it easy for the public to locate, as well as descriptions of how to find those pages on agency websites, appear in Appendix B.

Appendix A

Sample Website Text for Administrative Law Judges

About Our Administrative Law Judges

Administrative Law Judges (ALJs) at [agency] conduct hearings and decide cases under [insert name of authorizing act]. They are part of the [agency component in which ALJs are located], which is directed by [title of office head] and has offices in [cities]. Visit [link to agency organization chart] to see how [office] relates to other offices at [agency].

[Agency] is committed to ensuring that all hearings and appeals are conducted in a fair and equitable manner. Parties are entitled to a due process hearing presided over by an impartial, qualified ALJ. ALJs resolve cases involving [kinds of cases ALJs hear] in a fair, transparent, and accessible manner. Our ALJs are appointed by [agency official], and are [describe qualifications]. ALJs are paid according to the [pay scale for ALJs with link to the scale] scale set by statute under 5 U.S.C. 5372, subject to annual pay adjustments.

Cases are assigned to ALJs [in each geographic office] in rotation so far as practicable. The ALJ assigned to your case is responsible for [job duties, like taking evidence, hearing objections, issuing decisions]. ALJs are required by statute to perform their functions impartially. 5 U.S.C. 556(b). To ensure impartiality, they do not take part in investigative or enforcement activities, nor do they report to officials in the [agency]'s investigative or enforcement components. 5 U.S.C. 554(d), 3105. The ALJ assigned to your case may not communicate privately about the facts of your case with other agency officials. [More details on [agency]'s rules about communicating with ALJs are available [location of agency-specific ex parte prohibitions]].

By law, [agency] does not reward or discipline ALJs for their decisions. A federal statute provides that [agency] may remove, or take certain other disciplinary actions, against an ALJ it employs only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board. 5 U.S.C. 7521.

The agency has adopted rules of recusal [link] that allow a participant to request that the ALJ in charge of his or her case be disqualified if the participant believes the ALJ cannot fairly and impartially decide the case.

If you are dissatisfied with an ALJ's decision, you can request reconsideration from the ALJ or appeal that decision to [agency office/official]. Visit [link] for information on appealing an ALJ decision. [Agency office/official] may also review your case on [its/his or her] own initiative if there is an issue with the ALJ's decision.

For Further Information:

- Hiring process: [link]
- Pay rates: [link]
- How cases are assigned to ALJs: [link]
- Communicating with ALJs (ex parte communications): [link]
- Process for addressing allegations that an ALJ has a conflict of interest (recusal and disqualification procedures): [link]
- How to appeal an ALJ decision: [link]
- Case-processing goals: [link]
- Process for addressing allegations of ALJ misconduct: [link]

See also:

- Statutory provisions governing ALJs: 5 U.S.C. 554, 557, 3105, 4301, 5372, 7521
- OPM's regulations governing ALJs: 5 CFR 930.205–930.207, 930.211
- MSPB's regulations governing ALJs: 5 CFR 1201.127–1201.142
- [Additional legal provisions governing ALJs]

(report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/final-report-public-availability-information-about-agency-adjudicators.*

[12] *Id.* at 7.

[13] 5 U.S.C. 552.

[14] *Id.* § 552a.

[15] *Cf.* Admin. Conf. of the U.S., Recommendation 2017–3, *Plain Language in Regulatory Drafting,* 82 FR 61,728 (Dec. 29, 2017).

- Executive Orders pertaining to ALJs: E.O. 13,843 (giving agencies control over the hiring process of ALJs) [add other pertinent EOs]

Sample Website Text for Administrative Judges

If agencies have different kinds of adjudicators, they should consider providing a separate web page for each.

About Our [Insert Adjudicator Title]

[Adjudicator title] at [agency] [conduct hearings and decide cases/review appeals] under [name of authorizing act(s)]. They are part of the [agency component in which adjudicators are located], which is directed by [title of office head] and has offices in [cities]. Visit [link to agency organization chart] to see how [office] relates to other offices at [agency].

[Agency] is committed to ensuring that all hearings and appeals are conducted in a fair and equitable manner. Parties are entitled to a due process hearing presided over by an impartial, qualified [adjudicator title]. [Adjudicator title] resolve cases involving [kinds of cases] in a fair, transparent, and accessible manner. Our [adjudicator title] are appointed pursuant to [authorizing statute] by [agency official] [for terms of [number of years] years], and are [describe qualifications]. [Adjudicator title] are paid according to [[the pay scale for the adjudicator with link to the scale] or [the discretion of the agency head]].

Cases are [describe how cases are assigned]. The [adjudicator title] assigned to your case is responsible for [job duties, like taking evidence, hearing objections, issuing decisions]. [Description of policies (if any exist) that ensure the agency component or adjudicators remain independent from investigative or enforcement activities]. [Description of rules about ex parte communications, if any exist].

[Agency official or body] is responsible for evaluating the quality of [adjudicator title] decisions, and [agency official or body] conducts performance reviews of [adjudicator title]. [Agency official/entity from another agency] may remove the [adjudicator title] or [agency official or body/other entity] may discipline the [adjudicator title] by [kinds of discipline] when warranted.

The agency has adopted rules of recusal [link] that allow a participant to request that the [adjudicator title] in charge of his or her case be disqualified if the participant believes the [adjudicator title] cannot fairly and impartially decide the case.

If you are dissatisfied with an [adjudicator title] decision, you can request reconsideration from the [adjudicator title] or appeal that decision to [agency office/official]. Visit [link] for information on appealing an [adjudicator title] decision. [Agency office/official] may also review your case on [its/his or her] own initiative if there is an issue with the [adjudicator title]'s decision.

For Further Information:

- Hiring process: [link]
- Pay rates: [link]
- Bonuses and performance incentives: [link]
- How cases are assigned to [adjudicator title]: [link]
- Communicating with [adjudicator title] (ex parte communications): [link]
- Process for addressing allegations that an [adjudicator title] has a conflict of interest (recusal and disqualification procedures): [link]
- How to appeal an [adjudicator title] decision: [link]
- Case-processing goals: [link]
- Process for addressing allegations of [adjudicator title] misconduct: [link]

See also:

- Statutory provisions regarding [adjudicator title], including the appointment authority: [statutory citations]
- Agency regulations governing [adjudicator title]: [CFR provisions]

Appendix B

[**Note:** Appendix B has been omitted from this notice because of the inaccessible images it contains. The full appendix may be found online at *https://www.acus.gov/recommendation/publication-policies-governing-agency-adjudicators.*]

Administrative Conference Recommendation 2020–6

Agency Litigation Web Pages

Adopted December 17, 2020

Federal agencies and their component units [1] participate in thousands of court cases every year. Most such cases result in ''agency litigation materials,'' which this Recommendation defines as including agencies' publicly filed pleadings, briefs, and settlements, as well as court decisions, where such materials bear on agencies' regulatory or enforcement activities.

Public access to agency litigation materials is desirable for at least two reasons. First, because agency litigation materials often clarify how the federal government interprets and aims to enforce federal law, they can help people understand their legal obligations. Second, public access to agency litigation materials promotes accountable and transparent government. Those two reasons distinguish agency litigation materials from litigation filings by private parties.

However valuable public access to agency litigation materials might be, federal law does little to mandate it. When it comes to agencies' own litigation filings, only the Freedom of Information Act (FOIA) requires disclosure, and then only when members of the public specify the materials in which they are interested (and no FOIA exception applies).[2] In the same vein, the E-Government Act of 2002 requires federal courts to make their written opinions, including opinions in cases involving federal agencies, available on websites.[3] But that requirement has not always made judicial opinions readily accessible to the public, partly because most courts' websites lack functions and features that would allow users to easily identify cases about specific topics or agencies.

The most comprehensive source of agency litigation materials is the federal courts' Public Access to Court Electronic Records (PACER) service, which provides the public with instantaneous access to virtually every document filed in every federal court. But PACER searches often cost money, and the costs can add up quickly, especially when users are uncertain about what cases or documents they are trying to find. PACER's limited search functionality also makes it difficult to find cases involving particular agencies, statutes, regulations, or types of agency action. For example, a person interested in identifying ongoing cases to which the United States Fish and Wildlife Service (FWS) is a party would have to search for a host of terms—including ''United States Fish and Wildlife Service,'' ''U.S. Fish and Wildlife Service,'' and the names of FWS's recent directors—just to come close to identifying all such cases. Even after conducting all those searches, the person would still have to scroll through and eliminate search results involving state fish-and-wildlife agencies and private citizens with the same names as FWS's recent directors. Similarly, were a person interested in finding cases about FWS's listing of species under the Endangered Species Act (ESA), PACER would not afford that person any way to filter search results to include only cases about ESA listings. The person's only option would be to open and review documents in potentially thousands of cases.

The cost and time involved in performing this type of research limit PACER's usefulness as a tool for locating and searching agency litigation materials. And although paid legal services, such as Westlaw and Lexis, have far greater search capabilities than PACER, their costs can dissuade many individuals and researchers.

Agency litigation web pages, by contrast, can be a convenient way for the public to examine agency litigation materials. For purposes of this Recommendation, an agency litigation web page is a web page on an agency's website that systematically catalogs and links to agency litigation materials that may aid the public in understanding the agency's regulatory or enforcement activities. When agencies maintain up-to-date, search-friendly agency litigation web pages, the public can visit them and quickly find important filings in court cases concerning matters of interest. Agency litigation web pages thus make it easier for the public to learn about the law and to hold government accountable for agencies' actions.

Several federal agencies already maintain agency litigation web pages.[4] A survey of websites for twenty-five federal agencies revealed a range of practices regarding

[1] The term ''component units'' encompasses an agency's sub-units, which are often identified under terms like ''agency,'' ''bureau,'' ''administration,'' ''office,'' ''division,'' or ''service.'' For example, the United States Fish and Wildlife Service is a component unit of the Department of the Interior, and the Office of Water is a component unit of the United States Environmental Protection Agency.

[2] *See* 5 U.S.C. 552(a)(3).

[3] *See* 44 U.S.C. 3502(a).

[4] *See* Mark Thomson, Report on Agency Litigation web pages 14–16 (Nov. 24, 2020) (report to the Admin. Conf. of the U.S.), *https://www.acus.gov/report/report-agency-litigation-web pages.*

agency litigation web pages.[5] The survey suggests that most federal agencies do not maintain active agency litigation web pages. Among those that do, the quality of the agency litigation web pages varies appreciably. Some contain vast troves of agency litigation materials; others contain much more limited collections. Some are updated regularly; others are updated only sporadically. Some are easy to locate and search; others are not. In short, there appears to be no standard practice for publishing and maintaining agency litigation web pages, save that all the surveyed agency litigation web pages contained only the publicly filed versions of agency litigation materials, with all confidential material—such as trade secrets and personally identifiable information—redacted.

An inspection of agencies' litigation web pages suggests four general features that make an agency litigation web page useful. First, an agency's litigation web page must be easy to find. Second, it must contain a representative and up-to-date collection of agency litigation materials. Third, those materials must be easy to search and sort. And fourth, the agency's litigation web page must give visitors the information they need to understand the materials on the web page, including information about materials the agency omitted from the web page and the criteria the agency employed to determine which materials to include on the web page.

Agency litigation web pages can promote transparency and accountability. The Administrative Conference recognizes, however, that creating and maintaining a useful agency litigation web page takes time, money, and effort. An agency's decision to launch an agency litigation web page will necessarily be informed by considerations such as the agency's mission, litigation portfolio, existing technological capacity, budget, and the anticipated benefits—to the agency and the public—of creating an agency litigation web page.[6] Further, an agency's decisions about what content to include on an agency litigation web page should be tailored to the agency's particular circumstances. An agency that litigates thousands of cases each year, for example, could choose to feature only a representative sample of agency litigation materials on its agency litigation web page.

Similarly, an agency that litigates many repetitive, fact-based cases could reasonably choose to post documents from just a few representative cases instead of posting documents from all of its cases.[7] And an agency that litigates many different types of cases, some of obviously greater interest to the public than others, might appropriately restrict the contents of its agency litigation web page to agency litigation materials from the types of cases that are of greater public interest, particularly when the agency determines that the resources required to post more agency litigation materials can be better applied elsewhere.

Since the decision to create and maintain an agency litigation web page involves balancing factors that will differ from agency to agency, this Recommendation should not be read to suggest that agency litigation web pages be created and maintained by all agencies, especially those that litigate thousands of cases each year. Nor should this Recommendation be read as dictating the precise contents or structure of agency litigation web pages. While encouraging the creation and maintenance of agency litigation web pages, the Administrative Conference recognizes that an agency's particular circumstances might ultimately militate against creating an agency litigation web page or might support only the creation of a comparatively limited version.

At bottom, this Recommendation simply offers best practices and factors for agencies to consider in making their agency litigation materials available on their websites, should the agencies choose to do so. The Recommendation leaves the weighing and balancing of those factors to the sound discretion of individual agencies.

Recommendation

Providing Access to Agency Litigation Materials

1. Agencies should consider providing access on their websites to publicly filed pleadings, briefs, and settlements, as well as court decisions bearing on agencies' regulatory or enforcement activities (collectively ''agency litigation materials'').

2. Should an agency choose to post such material, an agency with a large volume of court litigation could decide not to post documents from every case. The agency might, for instance, post examples of filings from routine litigation and all or a portion of the filings from cases raising important or unusual questions.

3. In determining whether to provide access to agency litigation materials on their websites, and in determining which types of agency litigation materials to include on their websites, among the factors agencies should consider are the following:

a. The public's interest in having ready access to certain categories of the agency's litigation materials;

b. The extent to which providing access to agency litigation materials on the agency's website will advance the agency's mission;

c. The internal benefits of maintaining a web page providing access to certain types of agency litigation materials;

d. The costs of creating and maintaining a web page providing access to the types of agency litigation materials the agency sees fit to include;

e. The nature of the agency's litigation portfolio, including the quantity of litigation materials the agency generates each year;

f. The degree to which the agency's existing technological capacity can accommodate the creation and maintenance of a web page providing access to certain types of agency litigation materials;

g. The availability and cost of other technological services that may more reliably and effectively give access to agency litigation material because of its scale or volume and the wide variety of issues and matters involved; and

h. The risk of disclosure or increased dissemination of confidential or sensitive information of private litigants.

4. In determining which agency litigation materials to include on their websites, agencies should ensure that they have implemented appropriate safeguards to protect relevant privacy or business interests implicated by the disclosure of agency litigation materials. Each agency should implement a protocol to ensure that, before a document is posted to the agency's litigation web page, the document has been reviewed and determined not to contain confidential information, such as trade secrets and personal identifying information.

5. Agencies should disclose materials in a way that gives a full and accurate picture of their litigating positions. To provide proper context, agencies should:

a. Use objective, clear, and publicly posted criteria to determine which agency litigation materials the agencies will publish on their websites;

b. Regularly review their websites to ensure the agency litigation materials posted there (especially court opinions) are complete and up-to-date, and consider including notations regarding when material on the web page was last updated;

c. Provide appropriate context for agency litigation materials, at least when failure to do so might confuse or mislead the public;

d. Explain the types of litigation in which the agency is involved and other ways to search for any additional agency litigation materials not included on the agency's litigation web page, as well as opposing counsel's litigation filings;

e. When resources permit, consider posting opposing parties' litigation filings when they are significant or important to understanding an issue;

f. Neither present litigation materials as a means of setting policy, nor use those materials to circumvent rulemaking processes;

g. Ensure that descriptions of agency litigation materials, if any, fairly reflect the litigation; and

h. Recognize that some types of agency litigation materials may be of greater significance than others.

6. Agencies that choose to post significant quantities of agency litigation materials on

[5] *See id.* at 12–19 (identifying variations in agency practices). The survey conducted for this Recommendation covered all kinds of agencies—big and small, independent and not, regulatory and benefit-oriented, and so forth—with the aim of covering a broad and at least somewhat representative cross-section of federal agencies. In particular, the survey focused on agencies that are frequently in federal court or that are parties to a significant number of high-profile cases.

[6] Most federal agencies do not have independent litigation authority but are represented in court by the Department of Justice (DOJ). In most cases, these agencies designate a DOJ liaison, who is then added as a recipient for all court filing notices, resulting in automatic access to all filings via PACER. This automatic access should enable implementation of this Recommendation by client agencies.

[7] *Cf.* Admin. Conf. of the U.S., Recommendation 2017–1, *Adjudication Materials on Agency websites,* 82 FR 31,039, 31,040 (July 5, 2017) (''Agencies that adjudicate large volumes of cases that do not vary considerably in terms of their factual contexts or the legal analyses employed in their dispositions should consider disclosing on their websites a representative sampling of actual cases and associated adjudication materials.'').

their websites should consider grouping together links to those materials on a single, dedicated web page (an ''agency litigation web page''). If an agency is organized so that its component units have their own litigation portfolios, some or all of the component units may wish to have their own agency litigation web pages, or the agency may wish to maintain an agency litigation web page compiling litigation materials from or relating to the agency's component units.

Making It Easy To Locate Agency Litigation Web Pages

7. Agencies that post agency litigation materials on their websites should make sure that website users can easily locate those materials. Agencies can accomplish this goal by:

a. Displaying links to agency litigation web pages in readily visible locations on the homepage for the agency's website; and

b. Maintaining a search engine and a site map or index, or both, on the agency's homepage.

8. When an agency collects its component units' litigation materials on a single agency litigation web page, those component units' websites should clearly note that fact and include links to the agency's litigation web page. When an agency's component units maintain their own litigation web pages, the agency's website should clearly note that fact and include links to the component units' litigation web pages.

Making It Easy To Find Relevant Materials on Agency Litigation Web Pages

9. Agencies and their component units should have substantial flexibility in organizing materials. Agencies should consider grouping together materials from the same and related cases on their agency litigation web pages. Agencies might, for example, consider providing a separate docket page for each case, with a link to the docket page on their agency litigation web pages. Agencies should also consider linking to the grouped-together materials when issuing press releases concerning a particular litigation.

10. Agencies should consider offering general and advanced search and filtering options within their agency litigation web pages. The search and filtering options could, for instance, allow users to sort, narrow, or filter searches according to criteria such as action or case type, date, topic, case number, party name, a relevant statute or regulation, or specific words and phrases, along with any other criteria the agency decides are especially useful given its litigation activities.

[FR Doc. 2021–01273 Filed 1–21–21; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Media Outlets for Publication of Legal and Action Notices in the Southern Region

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists all newspapers that will be used by the Ranger Districts, Grasslands, Forests and the Regional Office of the Southern Region to publish notices required under 36 CFR parts 218 and 219. The intended effect of this action is to inform members of the public which newspapers will be used by the Forest Service to publish legal notices regarding proposed actions, notices of decisions and notices indicating opportunities to file objections.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions and notices of the opportunity to object under 36 CFR 218 and 36 CFR 219 shall begin the first day after the date of this publication.

ADDRESSES: Robert Bergstrom, Administrative Review Coordinator, Southern Region, Planning, 1720 Peachtree Road NW, Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT: Robert Bergstrom, Administrative Review Coordinator by telephone at (404) 606–6151 or by email at *robert.bergstrom@usda.gov.*

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southern Region will give notice of the opportunity to object to a proposed project under 36 CFR part 218, or developing, amending or revising land management plans under 36 CFR 219 in the following newspapers which are listed by Forest Service administrative unit. The timeframe for filing a comment, appeal or an objection shall be based on the date of publication of the notice of the proposed action in the newspaper of record for projects subject to 36 CFR 218 or 36 CFR 219. Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice. The following newspapers will be used to provide notice:

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one administrative unit of the 15 in the Southern Region:—''*Atlanta Journal—Constitution*'', published daily in Atlanta, Georgia.

Affecting National Forest System lands in only one administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District of the 6 in the National Forests in Alabama:—''*Montgomery Advertiser*'', published daily in Montgomery, Alabama. Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Bankhead Ranger District:—''*Northwest Alabamian*'', published bi-weekly (Wednesdays & Saturdays) in Haleyville, Alabama.

Conecuh Ranger District:—''*The Andalusia Star News*'', published bi-weekly (Wednesday and Saturday) in Andalusia, Alabama.

Oakmulgee Ranger District:—''*The Tuscaloosa News*'', published daily in Tuscaloosa, Alabama.

Shoal Creek Ranger District:—''*The Anniston Star*'' published daily in Anniston, Alabama.

Talladega Division:—''*The Anniston Star*'', published daily in Anniston, Alabama.

Talladega Ranger District:—''*The Daily Home*'', published daily in Talladega, Alabama.

Tuskegee Ranger District:—''*Tuskegee News*'', published weekly (Thursday) in Tuskegee, Alabama.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

''*The Times*'', published daily in Gainesville, Georgia.

District Ranger Decisions

Blue Ridge Ranger District:—''*The News Observer*'', (newspaper of record) published weekly (Wednesdays) in Blue Ridge, Georgia.

''*North Georgia News*'', (newspaper of record) published weekly (Wednesdays) in Blairsville, Georgia.

Conasauga Ranger District:—''*Daily Citizen*'', published daily in Dalton, Georgia.

Chattooga River Ranger District:—''*The Northeast Georgian*'', (newspaper of record) published bi-weekly (Wednesdays & Fridays) in Cornelia, Georgia.

''*Clayton Tribune*'', (newspaper of record) published weekly (Thursdays) in Clayton, Georgia.

Oconee Ranger District:—''*Eatonton Messenger*'', published weekly (Thursdays) in Eatonton, Georgia.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

''*Cleveland Daily Banner*'', published Sunday, Wedneday, and Friday in Cleveland, Tennessee.

District Ranger Decisions

Unaka Ranger District:—''*Greeneville Sun*'', published daily (except Sunday) in Greeneville, Tennessee.

Ocoee-Hiwassee Ranger District:—''*Polk County News*'', published Thursday only, Benton, Tennessee.

Tellico Ranger District:—''*Monroe County Advocate & Democrat*'', published tri-weekly (Wednesdays and Sundays) in Sweetwater, Tennessee.

Watauga Ranger District:—''*Johnson City Press*'', published daily in Johnson City, Tennessee.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

''*Lexington Herald-Leader*'', published daily in Lexington, Kentucky.

District Ranger Decisions

Cumberland Ranger District:—''*The Daily Independent*'', published Monday, Wednesday, Thursday, Friday, and Saturday in Ashland, Kentucky.

London Ranger District:—''*The Sentinel- Echo*'', published weekly on Wednesday in London, Kentucky.

Redbird Ranger District:—''*Manchester Enterprise*'', published weekly on Wednesday in Manchester, Kentucky.

Stearns Ranger District:—''*McCreary County Voice*'', published weekly on Thursdays in Whitley City, Kentucky.

El Yunque National Forest, Puerto Rico

Forest Supervisor Decisions

''*El Nuevo Dia*'', published daily in Spanish in San Juan, Puerto Rico.

''*San Juan Daily Star*'', published daily in English in San Juan, Puerto Rico.

National Forests in Florida, Florida

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District in the National Forests in Florida or Florida National Scenic Trail land outside Ranger Districts:—''*The Tallahassee Democrat*'', published daily in Tallahassee, FL. Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Apalachicola Ranger District:—''*Calhoun-Liberty Journal*'', published weekly (Wednesdays) in Bristol, Florida.

Lake George Ranger District:—''*The Ocala Star Banner*'', published daily in Ocala, Florida.

Osceola Ranger District:—''*The Lake City Reporter*'', published daily (except Sunday) in Lake City, Florida.

Seminole Ranger District:—''*The Daily Commercial*'', published daily in Leesburg, Florida.

Wakulla Ranger District:—''*The Tallahassee Democrat*'', published daily in Tallahassee, Florida.

Francis Marion & Sumter National Forests, South Carolina

Forest Supervisor Decisions

''*The State*'', published Sunday, Monday, Tuesday, Wednesday, Thursday, and Friday in Columbia, South Carolina.

District Ranger Decisions

Andrew Pickens Ranger District:—''*The Daily Journal*'', published daily (Tuesday through Saturday) in Seneca, South Carolina.

Enoree Ranger District:—''*Newberry Observer*'', published Wednesday in Newberry, South Carolina.

Long Cane Ranger District:—''*Index-Journal*'', published daily in Greenwood, South Carolina.

Francis Marion Ranger District:—''*Post and Courier*'', published daily in Charleston, South Carolina.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

''*Roanoke Times*'', published daily in Roanoke, Virginia.

District Ranger Decisions

Clinch Ranger District:—''*Coalfield Progress*'', published bi-weekly (Tuesdays and Fridays) in Norton, Virginia.

North River Ranger District:—''*Daily News Record*'', published daily (except Sunday) in Harrisonburg, Virginia.

Glenwood-Pedlar Ranger District:—''*Roanoke Times*'', published daily in Roanoke, Virginia.

James River Ranger District:—''*Virginian Review*'', published daily (except Sunday) in Covington, Virginia.

Lee Ranger District: —''*Shenandoah Valley Herald*'', published weekly (Wednesday) in Woodstock, Virginia.

Mount Rogers National Recreation Area:—''*Bristol Herald Courier*'', published daily in Bristol, Virginia.

Eastern Divide Ranger District:—''*Roanoke Times*'', published daily in Roanoke, Virginia.

Warm Springs Ranger District:—''*The Recorder*'', published weekly (Thursday) in Monterey, Virginia.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

''*The Town Talk*'', published tri-weekly (Sundays, Wednesdays, and Fridays) in Alexandria, Louisiana.

District Ranger Decisions

Calcasieu Ranger District:—''*The Town Talk*'', (newspaper of record) published tri-weekly (Sundays, Wednesdays, and Fridays) in Alexandria, Louisiana.

''*The Leesville Daily Leader*'', (secondary) published tri-weekly (Sundays, Wednesdays, and Fridays) in Leesville, Louisiana.

Caney Ranger District:—''*Minden Press Herald*'', (newspaper of record) published daily in Minden, Louisiana.

''*Homer Guardian Journal*'', (secondary) published weekly (Wednesdays) in Homer, Louisiana.

Catahoula Ranger District:—''*The Town Talk*'', published tri-weekly (Sundays, Wednesdays, and Fridays) in Alexandria, Louisiana.

Kisatchie Ranger District:—''*Natchitoches Times*'', published tri-weekly (Wednesdays, Satursdays, and Sundays) in Natchitoches, Louisiana.

Winn Ranger District:—''*Winn Parish Enterprise*'', published weekly (Wednesdays) in Winnfield, Louisiana.

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

''*The Paducah Sun*'', published daily in Paducah, Kentucky.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

District Ranger Decisions

Bienville Ranger District:—''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

Chickasawhay Ranger District:—''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

Delta Ranger District:—''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

De Soto Ranger District:—''*Clarion Ledger*'', published daily in Jackson, Mississippi.

Holly Springs Ranger District:—''*Clarion-Ledger*'', published daily in Jackson, Mississippi.

Homochitto Ranger District:—''*Clarion- Ledger*'', published daily in Jackson, Mississippi.

Tombigbee Ranger District:—''*Clarion- Ledger*'', published daily in Jackson, Mississippi.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

''*The Asheville Citizen-Times*'', published daily, Wednesday thru Sunday, (except Monday and Tuesday), in Asheville, North Carolina.

District Ranger Decisions

Appalachian Ranger District:—''*The Asheville Citizen-Times*'', published Wednesday thru Sunday, in Asheville, North Carolina.

Cheoah Ranger District:—''*Graham Star*'', published weekly (Thursdays) in Robbinsville, North Carolina.

Croatan Ranger District:—''*The Sun Journal*'', published daily in New Bern, North Carolina.

Grandfather Ranger District:—''*McDowell News*'', published daily in Marion, North Carolina.

Nantahala Ranger District:—''*The Franklin Press*'', published weekly on Wednesday in Franklin, North Carolina.

Pisgah Ranger District:—''*The Asheville Citizen-Times*'', published daily (Wednesday thru Sunday, except Monday and Tuesday) in Asheville, North Carolina.

Tusquitee Ranger District:—''*Cherokee Scout*'', published weekly (Wednesdays) in Murphy, North Carolina.

Uwharrie Ranger District:—''*Montgomery Herald*'', published weekly (Wednesdays) in Troy, North Carolina.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

''*Arkansas Democrat-Gazette*'', published Sunday in Little Rock, Arkansas.

District Ranger Decisions

Caddo-Womble Ranger District:—''*Arkansas Democrat-Gazette*'', published Sunday in Little Rock, Arkansas.

Jessieville-Winona-Fourche Ranger District:—''*Arkansas Democrat-Gazette*'', published Sunday in Little Rock, Arkansas.

Mena-Oden Ranger District:—''*Arkansas Democrat-Gazette*'', published Sunday in Little Rock, Arkansas.

Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak):—''*McCurtain Daily Gazette*'', published Tuesday, Thursday, and Saturdays in Idabel, Oklahoma.

Poteau-Cold Springs Ranger District:—''*Arkansas Democrat-Gazette*'', published Sunday in Little Rock, Arkansas.

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions

''*The Courier*'', published daily (Tuesday through Sunday) in Russellville, Arkansas.

District Ranger Decisions

Bayou Ranger District:—''*The Courier*'', published daily (Tuesday through Sunday) in Russellville, Arkansas.

Boston Mountain Ranger District:—''*Southwest Times Record*'', published daily in Fort Smith, Arkansas.

Buffalo Ranger District:—''*The Courier*'', published daily (Tuesday through Sunday) in Russellville, Arkansas.

Magazine Ranger District:—''*Southwest Times Record*'', published daily in Fort Smith, Arkansas.

Pleasant Hill Ranger District:—''*Johnson County Graphic*'', published weekly (Wednesday) in Clarksville, Arkansas.

St. Francis National Forest:—''*The Daily World*'', published bi-weekly (Tuesdays and Fridays) in Helena, Arkansas.

Sylamore Ranger District:—''*Stone County Leader*'', published weekly (Wednesday) in Mountain View, Arkansas.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

''*The Lufkin Daily News*'' published daily in Lufkin, Texas.

District Ranger Decisions

Angelina National Forest:—''*The Lufkin Daily News*'', published daily in Lufkin, Texas.

Caddo & LBJ National Grasslands:—''*Denton Record-Chronicle*'', published daily in Denton, Texas.

Davy Crockett National Forest:—''*The Lufkin Daily News*'', published daily in Lufkin, Texas.

Sabine National Forest:—''*The Lufkin Daily News*'', published daily in Lufkin, Texas.

Sam Houston National Forest:—''*The Courier*'', published daily in Conroe, Texas.

Christine Dawe,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2021–01309 Filed 1–21–21; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Virginia Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Virginia Advisory Committee (Committee) will hold a virtual (online) meeting Thursday, February 18, 2021 at 3:00 p.m. Eastern Time. The purpose of the meeting is to discuss the proposal on the Committee's forthcoming policing project.

DATES: The meeting will be held on Thursday, February 18, 2021, at 3:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION:

Public Access

- *Online:* (audio/visual) Register online: *https://bit.ly/3nK85I2*
- *Phone:* (audio only) 800–360–9505 USA Toll Free; Access code: 199 832 9662

Members of the public may listen to this discussion through the above call-in number or join online via the above web registration link. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind or hard of hearing may also follow the proceedings by first

calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Civil Rights Discussion: Policing in Virginia
III. Committee Q & A
IV. Public Comment
VI. Adjournment

Dated: January 14, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–01291 Filed 1–21–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a series of meetings via Webex on Wednesday, March 31, and Wednesday, April 21, 2021 from 2:00 p.m.–3:30 p.m. Pacific Time. The purpose of the meetings is for the Committee to discuss testimony and plan for upcoming panels.

DATES: These meetings will be held on:

- Wednesday, March 31, 2021 from 2:00 p.m.–3:30 p.m. Pacific Time
- Wednesday, April 21, 2021 from 2:00 p.m.–3:30 p.m. Pacific Time

ADDRESSES:

March 31st PUBLIC WEBEX
REGISTRATION LINK: *https://tinyurl.com/yy2ohp3s*
April 21st PUBLIC WEEX
REGISTRATION LINK: *https://tinyurl.com/yx9lb79b*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public Webex registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 N Los Angeles St., Suite 2010, Los Angeles, CA 90012, or email Brooke Peery at *bpeery@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Discussion
IV. Public Comment
V. Adjournment

Dated: January 14, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–01286 Filed 1–21–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Commission on Civil Rights; Notice of Public Meetings of the Illinois Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting via the online platform WebEx on Tuesday, February 9, 2021 at 12:00 p.m. Central Time. The purpose of the meeting is for the Committee to start preparing for their upcoming WebEx briefing on Education and concerns in the state.

DATES: The meeting will be held on:

- Tuesday, February 9, 2021, at 12:00 p.m. Central Time Web link: *https://civilrights.webex.com/civilrights/j.php?MTID=m764917f4d572a026d680fba5a0a2eb26*, or Join by phone: 800–360–9505 USA Toll Free, Access code: 199 496 5009.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 499–4066.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individual who is deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlZAAQ* under the Commission on Civil Rights, Illinois Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
II. Chair's comments
III. Discussion: Education Project
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: January 15, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–01388 Filed 1–21–21; 8:45 am]

BILLING CODE;P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 200723–0198]

Public Availability of Department of Commerce FY 2018 Service Contract Inventory Data

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of Public Availability of FY 2018 Service Contract Inventories Data.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of Commerce (DOC) is publishing this notice to advise the public of the availability of the Fiscal Year (FY) 2018 Service Contract Inventory data, a report that analyzes DOC's FY 2017 Service Contract Inventory and a plan for the analysis of FY 2018 Service Contract Inventory.

The service contract inventory provides information on service contract actions over $150,000 made in FY 2018. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance on service contract inventories issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP).

ADDRESSES: The Department of Commerce's FY 2018 Service Contract Inventory is included in the government-wide inventory available at: *https://www.acquisition.gov/service-contract-inventory,* which can be filtered to display the FY 2018 inventory for each agency. In addition to the link to access DOC's FY 2018 service contract inventory, the FY 2017 Analysis Report and Plan for analyzing the FY 2018 data is on the Office of Acquisition Management homepage at the following link *http://www.osec.doc.gov/oam/.* OFPP's guidance memo on service contract inventories is available at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Virna Winters, Director for Acquisitions Policy and Oversight Division at 202–482–4248 or *vwinters@doc.gov.*

Barry E. Berkowitz,

Senior Procurement Executive and Director, Office of Acquisition Management.

[FR Doc. 2021–01308 Filed 1–21–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order on aluminum extrusions from the People's Republic of China (China) for the period of review (POR) January 1, 2018 through December 31, 2018, and determines that countervailable subsidies are being provided to producers and exporters of aluminum extrusions. The final net countervailable subsidy rates are listed below in the section titled ''Final Results of Administrative Review.''

DATES: Applicable January 22, 2021.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0698.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** on August 5, 2020.[1] We invited parties to comment on the *Preliminary Results.* No interested party submitted comments or requested a hearing in this administrative review. On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[2] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days,[3] thereby extending the deadline for these final results until January 19, 2021. Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order is aluminum extrusions from China. The complete description of the scope is provided at Appendix I of this notice.

Changes Since the Preliminary Results

As no party submitted comments on the *Preliminary Results,* Commerce made no changes for these final results of review.

Rescission of Review

In the *Preliminary Results,* we stated our intention to rescind the review with respect to companies named in the *Initiation Notice* for which all review requests were timely withdrawn in accordance with 19 CFR 351.213(d)(1). These companies are listed in Appendix II of this notice. For these companies, Commerce is rescinding the administrative review and will assess duties at rates equal to the rates of the cash deposits for estimated countervailing duties required at the time of entry, or withdrawn from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1).[4]

[1] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind, in Part; 2018,* 85 FR 47349 (August 5, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,'' dated July 21, 2020.

[4] *See Preliminary Results,* 85 FR 47349, 47350.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we determine the following final net subsidy rates for the 2018 administrative review: [5]

Company	Final *ad valorem* rate (percent)
Activa International Inc	242.15
Changzou Tenglong Auto Parts Co. Ltd	16.08
CRRC Changzhou Auto Parts Co. Ltd	242.15
Dongguan Aoda Aluminum Co. Ltd	16.08
Guangdong Xingfa Aluminum Co., Ltd	242.15
Precision Metal Works Ltd	242.15

Assessment Rates

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after publication of these final results of review, to liquidate shipments of subject merchandise produced and/or exported by the companies listed above, entered, or withdrawn from warehouse, for consumption on or after January 1, 2018 through December 31, 2018, at the *ad valorem* rates listed above.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce will instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 13, 2021.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Order

The merchandise covered by the order{s} is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods.

Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.,* without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.,* prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached *(e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a ''finished goods kit.'' A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ''as is'' into a finished product. An imported product will not be considered a ''finished goods kit'' and therefore excluded from the scope of the

[5] *See Preliminary Results; see also* Memorandum, ''Administrative Review of Countervailing Duty Order on Aluminum Extrusions from the People's Republic of China: AFA Calculation Memorandum for the Preliminary Results of Review; 2018,'' dated August 28, 2020.

order{s} merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) Length of 37 millimeters (''mm'') or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm.

Also excluded from the scope of these order{s} are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements.

Also excluded from the scope of the order{s} is certain rectangular wire produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire. The product is made from aluminum alloy grade 1070 or 1370, with no recycled metal content allowed. The dimensions of the wire are 5 mm (+/- 0.05 mm) in width and 1.0 mm (+/ - 0.02 mm) in thickness. Imports of rectangular wire are provided for under HTSUS category 7605.19.000.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7606.12.3091, 7606.12.3096, 7604.21.0010, 7604.21.0090, 7604.29.1010, 7604.29.1090, 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these order{s} is dispositive.

Appendix II

List of Companies for Which We Are Rescinding This Administrative Review

1. Acro Import and Export Co.
2. Activa Leisure Inc.
3. Agilent Technologies Co. Ltd (China)
4. Allied Maker Limited
5. Alnan Aluminum Co., Ltd.
6. Alnan Aluminum Ltd.
7. Aluminicaste Fundicion de Mexico
8. AMC Limited
9. AMC Ltd.
10. Anji Chang Hong Chain Manufacturing
11. Anshan Zhongda Industry Co., Ltd.
12. Aoda Aluminium (Hong Kong) Co., Limited
13. AsiaAlum Group
14. Atlas Integrated Manufacturing Ltd.
15. Bath Fitter
16. Behr-Hella Thermocontrol (Shanghai) Co. Ltd.
17. Belton (Asia) Development Limited
18. Belton (Asia) Development Ltd.
19. Birchwoods (Lin'an) Leisure Products Co., Ltd.
20. Bolnar Hong Kong Ltd.
21. Bracalente Metal Products (Suzhou) Co., Ltd.
22. Brilliance General Equipment Co., Ltd.
23. Changshu Changshen Aluminum Products Co., Ltd.
24. Changshu Changsheng Aluminum Products Co., Ltd.
25. Changzhou Changzheng Evaporator Co., Ltd.
26. Changzhou Changzhen Evaporator Co., Ltd.
27. Changzhou Tenglong Auto Accessories Manufacturing Co. Ltd.
28. Changzhou Tenglong Auto Parts Co. Ltd.
29. China Square
30. China Square Industrial Co.
31. China Square Industrial Ltd.
32. China Zhongwang Holdings, Ltd.
33. Chiping One Stop Industrial & Trade Co., Ltd.
34. Classic & Contemporary Inc.
35. Clear Sky Inc.
36. Coclisa S.A. de C.V.
37. Cosco (J.M.) Aluminum Co., Ltd.
38. Cosco (J.M.) Aluminum Development Co. Ltd.
39. Dalian Huacheng Aquatic Products
40. Dalian Liwang Trade Co., Ltd.
41. Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.
42. Daya Hardware Co Ltd.
43. Dongguan Dazhan Metal Co., Ltd.
44. Dongguan Golden Tiger Hardware Industrial Co., Ltd.
45. Dongguang Aoda Aluminum Co., Ltd.
46. Dragonluxe Limited
47. Dynabright International Group (HK) Ltd.
48. Dynamic Technologies China
49. ETLA Technology (Wuxi) Co. Ltd.
50. Ever Extend Ent. Ltd.
51. Fenghua Metal Product Factory
52. First Union Property Limited
53. FookShing Metal & Plastic Co. Ltd.
54. Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone
55. Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.
56. Foshan Golden Source Aluminum Products Co., Ltd.
57. Foshan Guangcheng Aluminium Co., Ltd.
58. Foshan Jinlan Aluminum Co. Ltd.
59. Foshan JinLan Aluminum Co., Ltd.
60. Foshan JMA Aluminum Company Limited
61. Foshan Nanhai Niu Yuan Hardware Product Co., Ltd.
62. Foshan Shunde Aoneng Electrical Appliances Co., Ltd.
63. Foshan Shanshui Fenglu Aluminum Co., Ltd.
64. Foshan Yong Li Jian Aluminum Co., Ltd.
65. Fujian Sanchuan Aluminum Co., Ltd.
66. Fukang Aluminum & Plastic Import and Export Co., Ltd.
67. Fuzhou Sunmodo New Energy Equipment
68. Gaotang Xinhai Economy & Trade Co., Ltd.
69. Genimex Shanghai, Ltd.
70. Global Hi-Tek Precision Co. Ltd
71. Global PMX Dongguan Co., Ltd.
72. Global Point Technology (Far East) Limited
73. Golden Dragon Precise Copper Tube Group, Inc.
74. Gold Mountain International Development, Ltd.
75. Gran Cabrio Capital Pte. Ltd.
76. Gree Electric Appliances
77. Green Line Hose & Fittings
78. GT88 Capital Pte. Ltd.

79. Guang Ya Aluminium Industries (HK) Ltd.
80. Guang Ya Aluminium Industries Co. Ltd.
81. Guang Ya Aluminum Industries Company Ltd.
82. Guangcheng Aluminum Co., Ltd.
83. Guangdong Hao Mei Aluminum Co., Ltd.
84. Guangdong Jianmei Aluminum Profile Company Limited
85. Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.
86. Guangdong Midea
87. Guangdong Midea Microwave and Electrical Appliances
88. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
89. Guangdong Weiye Aluminum Factory Co., Ltd.
90. Guangdong Whirlpool Electrical Appliances Co., Ltd.
91. Guangdong Xin Wei Aluminum Products Co., Ltd.
92. Guangdong Yonglijian Aluminum Co., Ltd.
93. Guangdong Zhongya Aluminum Company Ltd.
94. Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.
95. Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.
96. Hangzhou Xingyi Metal Products Co., Ltd.
97. Hanwood Enterprises Limited
98. Hanyung Alcoba Co., Ltd.
99. Hanyung Alcobis Co., Ltd.
100. Hanyung Metal (Suzhou) Co., Ltd.
101. Hao Mei Aluminum Co., Ltd.
102. Hao Mei Aluminum International Co., Ltd.
103. Hebei Xusen Wire Mesh Products Co., Ltd.
104. Henan New Kelong Electrical Appliances Co., Ltd.
105. Henan Zhongduo Aluminum Magnesium New Material Co., Ltd.
106. Hitachi High-Technologies (Shanghai) Co., Ltd.
107. Hong Kong Gree Electric Appliances Sales Limited
108. Hong Kong Modern Non-Ferrous Metal
109. Honsense Development Company
110. Hui Mei Gao Aluminum Foshan Co., Ltd.
111. Huixin Aluminum
112. IDEX Dinglee Technology (Tianjin) Co., Ltd.
113. IDEX Health
114. IDEX Technology Suzhou Co., Ltd.
115. Innovative Aluminum (Hong Kong) Limited
116. iSource Asia
117. Jackson Travel Products Co., Ltd.
118. Jangho Curtain Wall Hong Kong Ltd.
119. Jiangmen Jianghai Foreign Ent. Gen.
120. Jiangmen Jianghai District Foreign Economic Enterprise Corp. Ltd.
121. Jiangmen Qunxing Hardware Diecasting Co., Ltd.
122. Jiangsu Changfa Refrigeration Co.
123. Jiangyin Suncitygaylin
124. Jiangyin Trust International Inc.
125. Jiangyin Xinhong Doors and Windows Co., Ltd.
126. Jiaxing Jackson Travel Products Co., Ltd.
127. Jiaxing Taixin Metal Products Co., Ltd.
128. Jiuyan Co., Ltd.
129. JMA (HK) Company Limited
130. Johnson Precision Engineering (Suzhou) Co., Ltd.
131. Justhere Co., Ltd.
132. Kam Kiu Aluminum Products Sdn Bhd
133. Kanal Precision Aluminum Product Co., Ltd.
134. Karlton Aluminum Company Ltd.
135. Kong Ah International Company Limited
136. Kromet International
137. Kromet International Inc.
138. Kromet Intl Inc.
139. Kunshan Giant Light Metal Technology Co., Ltd.
140. Liaoning Zhong Da Industrial Aluminum Co., Ltd.
141. Liaoning Zhongwang Group Co., Ltd.
142. Liaoyang Zhongwang Aluminum Profile Co. Ltd.
143. Longkou Donghai Trade Co., Ltd.
144. MAAX Bath Inc.
145. MAHLE Holding (China) Co., Ltd.
146. Metal Tech Co Ltd.
147. Metaltek Group Co., Ltd.
148. Metaltek Metal Industry Co., Ltd.
149. Midea Air Conditioning Equipment Co., Ltd.
150. Midea Electric Trading Co., Pte Ltd.
151. Midea International Trading Co., Ltd.
152. Midea International Training Co., Ltd.
153. Miland Luck Limited
154. Nanhai Textiles Import & Export Co., Ltd.
155. New Asia Aluminum & Stainless Steel Product Co., Ltd.
156. New Zhongya Aluminum Factory
157. Nidec Sankyo Singapore Pte. Ltd.
158. Nidec Sankyo (Zhejang) Corporation
159. Nidec Sankyo Zhejiang Corporation
160. Ningbo Coaster International Co., Ltd.
161. Ningbo Hi Tech Reliable Manufacturing Company
162. Ningbo Innopower Tengda Machinery
163. Ningbo Ivy Daily Commodity Co., Ltd.
164. Ningbo Yili Import and Export Co., Ltd.
165. North China Aluminum Co., Ltd.
166. North Fenghua Aluminum Ltd.
167. Northern States Metals
168. PanAsia Aluminum (China) Limited
169. PENCOM Dongguan China
170. Pengcheng Aluminum Enterprise Inc.
171. Permasteelisa Hong Kong Ltd.
172. Permasteelisa South China Factory
173. Pingguo Aluminum Company Limited
174. Pingguo Asia Aluminum Co., Ltd.
175. Popular Plastics Company Limited
176. Press Metal International Ltd.
177. Qingdao Sea Nova Building
178. Samuel, Son & Co., Ltd.
179. Sanchuan Aluminum Co., Ltd.
180. Sanhua (Hangzhou) Micro Channel Heat Exchanger Co., Ltd.
181. Shandong Fukang Aluminum & Plastic Co. Ltd.
182. Shandong Huajian Aluminum Group
183. Shangdong Huasheng Pesticide Machinery Co.
184. Shangdong Nanshan Aluminum Co., Ltd.
185. Shanghai Automobile Air Conditioner Accessories Ltd.
186. Shanghai Automobile Air-Conditioner Accessories Co Ltd.
187. Shanghai Canghai Aluminum Tube Packaging Co., Ltd.
188. Shanghai Dofiberone Composites Co. Ltd.
189. Shanghai Dongsheng Metal
190. Shanghai Shen Hang Imp & Exp Co., Ltd.
191. Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co. Ltd.
192. Shanghai Top-Ranking Aluminum Products Co., Ltd.
193. Shanghai Top-Ranking New Materials Co., Ltd.
194. Shenzhen Hudson Technology Development Co.
195. Shenzhen Jiuyuan Co., Ltd.
196. Sihui Shi Guo Yao Aluminum Co., Ltd.
197. Sincere Profit
198. Skyline Exhibit Systems (Shanghai) Co. Ltd.
199. Southwest Aluminum (Group) Co., Ltd.
200. Springs Window Fashions De Victoria
201. Summit Plastics Nanjing Co. Ltd.
202. Suzhou JRP Import & Export Co., Ltd.
203. Suzhou New Hongji Precision Part Co.
204. Tai-Ao Aluminum (Taishan) Co. Ltd.
205. Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.
206. Taitoh Machinery Shanghai Co. Ltd.
207. Taizhou Lifeng Manufacturing Co., Ltd.
208. Taizhou United Imp. & Exp. Co., Ltd.
209. tenKsolar (Shanghai) Co., Ltd.
210. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
211. Tianjin Jinmao Import & Export Corp., Ltd.
212. Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.
213. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
214. Tiazhou Lifeng Manufacturing Corporation
215. Top-Wok Metal Co., Ltd.
216. Traffic Brick Network, LLC
217. Union Aluminum (SIP) Co.
218. Union Industry (Asia) Co., Ltd.
219. USA Worldwide Door Components (Pinghu) Co., Ltd.
220. Wenzhou Shengbo Decoration & Hardware
221. Whirlpool Canada L.P.
222. Whirlpool (Guangdong)
223. Whirlpool Microwave Products Development Ltd.
224. Wonjin Autoparts
225. Worldwide Door Components, Inc.
226. WTI Building Products, Ltd.
227. Wuxi Lutong Fiberglass Doors Co., Ltd.
228. Xinchang Yongqiang Air Conditioning Accessories Co., Ltd.
229. Xin Wei Aluminum Co.
230. Xin Wei Aluminum Company Limited
231. Xinya Aluminum & Stainless Steel Product Co., Ltd.
232. Yuyao Fanshun Import & Export Co., Ltd.
233. Yuyao Haoshen Import & Export
234. Zahoqing China Square Industry Limited

235. Zhaoqing Asia Aluminum Factory Company Ltd.
236. Zhaoqing China Square Industrial Ltd.
237. Zhaoqing China Square Industry Limited
238. Zhaoqing New Zhongya Aluminum Co., Ltd.
239. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
240. Zhejiang Lilies Industrial and Commercial Co.
241. Zhejiang Yili Automobile Air Condition Co., Ltd.
242. Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.
243. Zhejiang Zhengte Group Co., Ltd.
244. Zhenjiang Xinlong Group Co., Ltd.
245. Zhongshan Daya Hardware Co., Ltd.
246. Zhongshan Gold Mountain Aluminum Factory Ltd.
247. Zhongya Shaped Aluminum (HK) Holding Limited
248. Zhuhai Runxingtai Electrical Equipment Co., Ltd.

[FR Doc. 2021–01370 Filed 1–21–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA825]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 66 Assessment Webinar III for South Atlantic Tilefish.

SUMMARY: The SEDAR 66 stock assessment of the South Atlantic stock of Tilefish will consist of a data scoping webinar, a workshop, and a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 66 South Atlantic Tilefish Assessment Webinar III will be held via webinar on February 18, 2021, from 12 p.m. until 3 p.m., EST. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice. Additional SEDAR 66 webinar dates and times will publish in a subsequent issue in the **Federal Register**.

ADDRESSES:

Meeting address: The SEDAR 66 South Atlantic Tilefish Assessment Webinar III will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/5508517383600709904.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 66 South Atlantic Tilefish Assessment Webinar III are as follows:

- Finalize discussion on base model configuration, sensitivity runs, and projections

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 15, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–01391 Filed 1–21–21; 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; Fishery Capacity Reduction Program Buyback Requests

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 March 23, 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 0648–0376 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 Elaine Saiz, Chief, Financial Services Division, NOAA National Marine Fisheries Service, (301) 427–8725 or *elaine.saiz@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to provide for voluntary reduction of excess fishing capacity through fishing capacity reduction (buyback) programs. Excess fishing capacity decreases fisheries earnings, complicates fishery management, and imperils fishery conservation. The statutory objective of a program is ''to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time.'' Buybacks pay fishermen either to: (1) Surrender their fishing permits; or (2) both surrender their permits and either scrap their fishing vessels or restrict vessel title to prevent fishing. Buybacks can involve either a Federal or State fishery. Buybacks can be funded via a long-term loan from the Federal government to the fishery (industry-funded buybacks), to be repaid by the industry by post-buyback landing fees, or funded from appropriations (non-industry funded) or other non-loan sources of funds. Programs involving industry financed loans are authorized by section 1111 of title XI of the Merchant Marine Act, 1936.

NOAA National Marine Fisheries Service (NMFS) established programs to reduce excess fishing capacity by paying fishermen to surrender their vessels/permits. The information collected by NMFS involves the submission of buyback requests by industry, submission of bids, referenda of fishery participants and reporting of collection of fees to repay buyback loans. For buybacks involving State-managed fisheries, the State may be involved in developing the buyback plan and complying with other information requirements. NMFS requests information from participating buyback participants to track repayments of the loans as well as ensure accurate management and monitoring of the loans. The fees for recordkeeping and reporting requirements at 50 CFR parts 600.1013 through 600.1017 form the basis for the collection of information.

II. Method of Collection

Paper reports or electronic reports are required from buyback participants. Methods of submittal include mailing of paper reports, electronic submission via the internet, and/or facsimile transmission.

III. Data

OMB Control Number: 0648–0376.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; individuals or households; and state, local, or tribal government.

Estimated Number of Respondents: 200.

Estimated Time per Response: Implementation plan, 6,634 hours; referenda votes, bids, seller/buyer reports and annual fee collection reports, 4 hours each; completion of fish ticket, 10 minutes; monthly fee collection report, 2 hours; advising holder/owner of conflict with accepted bidders' representations, 1 hour; potentially 270 hours-state approval/review of plans. *Estimated Total Annual Burden Hours:* 15,838.

Estimated Total Annual Cost to Public: $1,596 in recordkeeping/reporting costs.

Respondent's Obligation: Required to obtain or retain benefits, Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Reauthorization 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. 2021–01393 Filed 1–21–21; 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; West Coast Region Vessel Identification Requirements

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 March 23, 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 0648–0355 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 Keeley Kent, (206) 247–8252 or *keeley.kent@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The success of fisheries management programs depends significantly on regulatory compliance. The vessel identification requirement is essential to facilitate enforcement. The ability to link fishing (or other activity) to the vessel owner or operator is crucial to enforcement of regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. A vessel's official number is required to be displayed on the port and starboard sides of the deckhouse or hull, and on a weather deck. It identifies each vessel and should be visible at distances at sea and in the air. Law enforcement personnel rely on vessel marking information to assure compliance with fisheries management regulations. Vessels that qualify for particular fisheries are also readily identified, and this allows for more cost-effective enforcement. Cooperating fishermen also use the vessel numbers to report suspicious or non-compliant activities that they observe in unauthorized areas. The identifying number on fishing vessels is used by the National Marine Fisheries Service (NMFS), the United States Coast Guard (USCG), and other marine agencies in issuing regulations, prosecutions, and other enforcement actions necessary to support sustainable fisheries behaviors as intended in regulations. Regulation-compliant fishermen ultimately benefit from these requirements, as unauthorized and illegal fishing is deterred, and more burdensome regulations are avoided.

II. Method of Collection

Fishing vessel owners physically mark vessels with identification numbers in three locations per vessel.

III. Data

OMB Control Number: 0648–0355.

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: 1,203.

Estimated Time per Response: 15 minutes per gear marking.

Estimated Total Annual Burden Hours: 901 hours.

Estimated Total Annual Cost to Public: $25,701.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 660.12.

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. 2021–01392 Filed 1–21–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2020–0043]

Sovereign Immunity Study

AGENCY: Patent and Trademark Office, Department of Commerce.

ACTION: Request for information.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice in the **Federal Register** on November 5, 2020, requesting information on the extent to which patent or trademark rights holders are experiencing infringement by state entities without adequate remedies under state law, and the extent to which such infringements appear to be based on intentional or reckless conduct. With this new notice, the USPTO is supplementing the previous notice with additional questions.

DATES: *Comment date:* Written comments must be received on or before February 22, 2021.

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, enter docket number PTO–T–2020–0043 on the homepage and click ''search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this Request for Information and click on the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal (*www.regulations.gov*) for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions regarding how to submit comments by mail or by hand delivery, based on the public's ability to obtain access to USPTO facilities at the time.

Submissions of Business Confidential Information: Any submissions containing business confidential information must be marked ''confidential treatment requested'' and submitted through *www.regulations.gov.* Submitters should provide an index listing the document(s) or information they would like the USPTO to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public as well. The USPTO also requests that submitters of business confidential

information include a non-confidential version (either redacted or summarized) that will be available for public viewing and posted on *www.regulations.gov.* In the event that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the submitter post a notice in the docket stating that it has provided the USPTO with business confidential information. Should a submitter either fail to docket a non-confidential version of its submission or to post a notice that business confidential information has been provided, the USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Anonymous submissions: The USPTO will accept anonymous submissions. Enter ''N/A'' in the required fields if you wish to remain anonymous.

FOR FURTHER INFORMATION CONTACT: Laura Hammel, by telephone at 571–272–9300.

SUPPLEMENTARY INFORMATION: At the request of Senators Thom Tillis and Patrick Leahy, the USPTO is undertaking a study of the extent to which patent or trademark rights holders are experiencing infringement by state entities without adequate remedies under state law, and the extent to which such infringements appear to be based on intentional or reckless conduct.

On November 5, 2020, the USPTO published a notice in the **Federal Register** seeking public input on these matters. *See* 85 FR 70589 (Nov. 5, 2020). That notice set forth various questions relevant to the study. The USPTO appreciates the submissions received to date in response to that notice and will consider them in preparing the study. In addition, the USPTO now invites interested members of the public to respond to questions posed in that notice, and/or to the below questions. The public can also provide any other information it believes to be relevant.

1. If you are a patent or trademark right holder, has a state government or state entity ever used your patent or trademark without permission? If yes: (a) Did you pursue legal action for that use? Why or why not? (b) Were you able to seek relief under state law? (c) Did the availability of the defense of sovereign immunity deter you from litigating the matter in federal court?

2. As a state or state entity, do you believe that (a) your state or state entity has policies or practices that provide safeguards against the intentional or reckless infringement of patents and trademarks, and (b) relevant state laws provide adequate remedies if infringement occurs?

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021–01305 Filed 1–21–21; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0013]

Agency Information Collection Activities; Comment Request; Office of Special Education and Rehabilitative Services Peer Reviewer Data Form

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before March 23, 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–2021–SCC–0013. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Justin Hampton, (202) 245–6111.

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: Office of Special Education and Rehabilitative Services Peer Reviewer Data Form.

OMB Control Number: 1820–0583.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 350.

Total Estimated Number of Annual Burden Hours: 88.

Abstract: The OSERS Peer Reviewer Data Form (OPRDF) is used by Office of Special Education and Rehabilitative Services (OSERS) staff to identify potential reviewers who would be qualified to review specific types of grant applications for funding. OSERS uses this form to collect background contact information for each potential reviewer; and to provide information on any reasonable accommodations that might be required by the individual. OSERS is requesting an extension of the expiration date with no changes to the form. The previous version of the OPRDF, 1820–0583, will expire on May 31, 2021.

Dated: January 14, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–01294 Filed 1–21–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Accrediting Agencies Currently Undergoing Review for the Purposes of Recognition by the U.S. Secretary of Education

AGENCY: Office of Postsecondary Education, Accreditation Group, U.S. Department of Education.

ACTION: Call for written third-party comments.

SUMMARY: This notice provides information to members of the public on submitting written comments for accrediting agencies currently undergoing review for purposes of recognition by the U.S. Secretary of Education.

FOR FURTHER INFORMATION CONTACT: Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Room 270–01, Washington, DC 20202, telephone: (202) 453–6128, or email: *herman.bounds@ed.gov.*

SUPPLEMENTARY INFORMATION: This request for written third-party comments concerning the performance of accrediting agencies under review by the Secretary of Education is required by § 496(n)(1)(A) of the Higher Education Act (HEA) of 1965, as amended, and pertains to the winter 2022 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). The meeting date and location have not been determined, but will be announced in a later **Federal Register** notice. In addition, a later **Federal Register** notice will describe how to register to provide oral comments at the meeting.

Agencies Under Review and Evaluation: The Department requests written comments from the public on the following accrediting agencies, which are currently undergoing review and evaluation by the Accreditation Group, and which will be reviewed at the winter 2022 NACIQI meeting.

The agencies are listed by the type of application each has submitted. We have also indicated each agency's current scope of recognition. If any agency requests a change to its scope of recognition, we have identified both the current scope of recognition and the requested scope of recognition.

Applications for Renewal of Recognition

1. American Podiatric Medical Association, Council on Podiatric Medical Education. Scope of recognition: The accreditation and preaccreditation (''Provisional Accreditation'') throughout the United States of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine.

2. The Council on Chiropractic Education. Scope of recognition: The accreditation of programs leading to the Doctor of Chiropractic degree and single-purpose institutions offering the Doctor of Chiropractic program.

3. Commission on English Language Program Accreditation. Scope of recognition: The accreditation of postsecondary, non-degree-granting English language programs and institutions in the United States including those programs offered via distance education.

4. Joint Review Committee on Education in Radiologic Technology. Scope of recognition: The accreditation of educational programs in radiography, magnetic resonance, radiation therapy, and medical dosimetry, including those offered via distance education, at the certificate, associate, and baccalaureate levels.

5. North Dakota Board of Nursing. Scope of Recognition: Recognized for the Approval of Nurse Education in the State of North Dakota.

Submission of Written Comments Regarding a Specific Accrediting Agency Under Review

Written comments about the recognition of any of the accrediting agencies listed above must be received by February 19, 2021 in the *ThirdPartyComments@ed.gov* mailbox and include the subject line ''Written Comments: (agency name).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Comments about an agency that has submitted a petition for initial recognition, renewal of recognition, or an expansion of scope must relate to the agency's compliance with the Criteria for the Recognition of Accrediting Agencies, which are available at *https://www.ed.gov/accreditation?src=rn.*

Only written materials submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and NACIQI in their deliberations.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c

Christopher McCaghren,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2021–01357 Filed 1–21–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Inviting Applications for Proprietary Institutions Under the Higher Education Emergency Relief Fund (HEERF), Section 314(a)(4); Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA); Correction

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice; correction.

SUMMARY: On January 15, 2021, the Department published a notice in the **Federal Register** inviting applications (NIA) from eligible proprietary institutions listed on the Department's section 314(a)(4) allocation table to apply for funding under the Proprietary Institution Grant Funds for Students program, Catalog of Federal Domestic Assistance (CFDA) number 84.425Q. This notice corrects the *Grants.gov*

Opportunity Number and the OMB control number associated with this collection, and clarifies the deadline date for transmittal of applications. All other information in the NIA, including the April 15, 2021, deadline for transmittal of applications, remains the same.

DATES: This correction is applicable January 22, 2021.

FOR FURTHER INFORMATION CONTACT: Karen Epps, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–64, Washington, DC 20202. Telephone: The Department of Education HEERF Call Center at (202) 377–3711. Email: *HEERF@ed.gov.* Please also visit our HEERF website at: *https://www2.ed.gov/about/offices/list/ope/crrsaa.html.*

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: On Jaunary 15, 2021, we published in the **Federal Register** an NIA for Proprietary Institutions for the HEERF section 314(a)(4) program (86 FR 4010). This notice specifies that the correct *Grants.gov* Opportunity Number is ED–GRANTS–011521–005 and that the OMB control number associated with this collection is 1840–0852, and clarifies the deadline date for transmittal of applications. All other requirements and conditions in the NIA remains the same.

Corrections

In FR Doc. 2021–00936 appearing on page 4010 of the **Federal Register** of January 15, 2021, the following corrections are made:

1. On page 4010, in the third column, under **SUMMARY** and after ''This notice relates to the approved information collection under OMB control number'', we remove ''XXXX–XXXX'' and add in its place ''1840–0852''.

2. On page 4011, in the second column, under ''IV. Application Submission and Information'' and after ''1. Application Sumbission Instructions'', we remove the sentence ''The *Grants.gov* Funding Opportunity Numbers are ED–GRANTS–041020–003 for the Student Aid Portion and ED–GRANTS–042120–004 for the Institutional Portion'' and add in its place ''The *Grants.gov* Funding Opportunity Number is ED–GRANTS–011521–005.''

3. On page 4011, in the second column, under ''IV. Application Submission and Information'' and after ''1. Application Sumbission Instructions'', we remove ''XXX Date [90 days after publication]'' and add in its place ''April 15, 2021''.

Program Authority: Section 314 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice, the NIA, and a copy of the application 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.

Christopher J. McCaghren,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2021–01531 Filed 1–21–21; 8:45 am]

BILLING CODE 4000–01–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: PR21–15–000.

Applicants: Columbia Gas of Maryland, Inc.

Description: Tariff filing per 284.123(b),(e)/: CMD Rates effective Dec 11 2020 to be effective 12/11/2020 under PR21–15.

Filed Date: 1/11/2021.

Accession Number: 202101115173.

Comments/Protests Due: 5 p.m. ET 2/1/2021.

Docket Numbers: RP21–380–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—CNX Gas to Direct Energy 961387 to be effective 1/14/2021.

Filed Date: 1/13/21.

Accession Number: 20210113–5032.

Comments Due: 5 p.m. ET 1/25/21.

Docket Numbers: RP21–381–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Abandonment of X–23 in Volume No.2 to be effective 2/12/2021.

Filed Date: 1/13/21.

Accession Number: 20210113–5060.

Comments Due: 5 p.m. ET 1/25/21.

Docket Numbers: RP21–382–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Yankee Gas 510802 Release eff 1–14–2021 to be effective 1/14/2021.

Filed Date: 1/13/21.

Accession Number: 20210113–5131.

Comments Due: 5 p.m. ET 1/25/21.

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 date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–01350 Filed 1–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–41–000]

DTE Electric Company v. Midcontinent Independent System Operator, Inc. and International Transmission Company, LLC; Notice of Complaint

Take notice that on January 14, 2021, pursuant to Section 206 and Section 306 of the Federal Power Act [1] and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), [2] DTE Electric Company (Complainant) filed a formal complaint against Midcontinent Independent System Operator, Inc. (MISO) and International Transmission Company, LLC, dba ITC Transmission (ITCT or Respondent), alleging that MISO has inappropriately included a local distribution project proposed by ITCT in MISO's 2019 Transmission Expansion Plan and that such project must be removed, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 3, 2021.

Dated: January 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–01345 Filed 1–21–21; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824e and 825e (2012).

[2] 18 CFR 385.206 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3063–021]

Blackstone Hydro Associates; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a subsequent license for the Central Falls Hydroelectric Project No. 3063 (Project No. 3063), located on the Blackstone River in Providence County, Rhode Island, and has prepared an Environmental Assessment (EA) for the project.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–3063–021.

For further information, contact John Baummer at (202) 502–6837, or at *John.Baummer@ferc.gov.*

Dated: January 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–01346 Filed 1–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–119–003.
Applicants: Gabelli, Mario J., GGCP, Inc., GGCP Holdings, LLC, GAMCO Investors, Inc., Associated Capital Group, Inc.
Description: Request for Reauthorization and Extension of Blanket Authorizations Under Section 203 of the Federal Power Act and Request for Expedited Consideration of Mario J. Gabelli, et al.
Filed Date: 1/13/21.
Accession Number: 20210113–5165.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: EC21–43–000.
Applicants: Indiana Crossroads Wind Farm LLC, Indiana Crossroads Wind Generation LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Indiana Crossroads Wind Farm LLC, et al.
Filed Date: 1/13/21.
Accession Number: 20210113–5140.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: EC21–44–000.
Applicants: Wheelabrator Shasta Energy Company Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Wheelabrator Shasta Energy Company Inc.
Filed Date: 1/13/21.
Accession Number: 20210113–5168.
Comments Due: 5 p.m. ET 2/3/21.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–70–000.
Applicants: Western Trail Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Western Trail Wind, LLC.
Filed Date: 1/13/21.
Accession Number: 20210113–5155.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: EG21–71–000.
Applicants: Helena Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Helena Wind, LLC.
Filed Date: 1/13/21.
Accession Number: 20210113–5156.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: EG21–72–000.
Applicants: Sparta Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Sparta Solar, LLC.
Filed Date: 1/13/21.
Accession Number: 20210113–5158.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: EG21–73–000.
Applicants: Old 300 Solar Center, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Old 300 Solar Center, LLC.
Filed Date: 1/13/21.
Accession Number: 20210113–5176.
Comments Due: 5 p.m. ET 2/3/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1818–025; ER10–1817–022; ER10–1819–029 ER10–1820–032.
Applicants: Public Service Company of Colorado, Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Southwestern Public Service Company.
Description: Notice of Change in Status of Public Service Company of Colorado, et al.
Filed Date: 1/13/21.
Accession Number: 20210113–5166.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: ER15–1429–015.
Applicants: Versant Power.
Description: Compliance filing: Joint Offer of Settlement—ER15–1429 (Corrected TOFC) to be effective N/A.
Filed Date: 1/14/21.
Accession Number: 20210114–5016.
Comments Due: 5 p.m. ET 2/4/21.

Docket Numbers: ER20–1610–002.
Applicants: Lone Tree Wind, LLC.
Description: Notice of Non-Material Change in Status of Lone Tree Wind, LLC.
Filed Date: 1/13/21.
Accession Number: 20210113–5162.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: ER21–293–002.
Applicants: Horizon West Transmission, LLC.
Description: Compliance filing: Horizon West Transmission, LLC December 31 Letter Order Compliance Filing to be effective 1/1/2021.
Filed Date: 1/14/21.
Accession Number: 20210114–5095.
Comments Due: 5 p.m. ET 2/4/21.

Docket Numbers: ER21–470–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3675 Doniphan Electric Cooperative Assn, Inc. NITSA NOA to be effective 9/1/2020.
Filed Date: 1/14/21.
Accession Number: 20210114–5051.
Comments Due: 5 p.m. ET 2/4/21.

Docket Numbers: ER21–483–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3620R1 Kansas City Board of Public Utilities NITSA NOA to be effective 9/1/2020.
Filed Date: 1/13/21.
Accession Number: 20210113–5119.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: ER21–880–000.
Applicants: Northern Indiana Public Service Company.
Description: § 205(d) Rate Filing: Filing of an Amended CIAC Agreement to be effective 1/5/2021.
Filed Date: 1/13/21.
Accession Number: 20210113–5133.
Comments Due: 5 p.m. ET 2/3/21.

Docket Numbers: ER21–881–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notice of Termination City of Corona IFA & DSA SA Nos. 1077–1078 to be effective 1/16/2021.
Filed Date: 1/14/21.
Accession Number: 20210114–5045.
Comments Due: 5 p.m. ET 2/4/21.

Docket Numbers: ER21–882–000.
Applicants: Outlaw Wind Project, LLC.
Description: Tariff Cancellation: Cancelling section 10 to be effective 1/15/2021.
Filed Date: 1/14/21.
Accession Number: 20210114–5063.
Comments Due: 5 p.m. ET 2/4/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–25–000; ES21–26–000.
Applicants: Dominion Energy South Carolina, Inc., South Carolina Generating Company, Inc.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities for Dominion Energy South Carolina, Inc. et al.
Filed Date: 1/14/21.
Accession Number: 20210114–5118.
Comments Due: 5 p.m. ET 2/4/21.

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: January 15, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–01349 Filed 1–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–23–000]

Columbia Gas Transmission, LLC.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on January 5, 2021, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, TX 77002–2700 filed in the above referenced docket a prior notice pursuant to Section 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, requesting authorization to abandon five injection/withdrawal wells and associated pipelines and appurtenances, located in its Coco B and Coco C Storage Fields in Kanawha County, West Virginia (2021 Coco B and Coco C Wells Abandonment Project or Project). Columbia proposes to abandon these facilities under authorities granted by its blanket certificate issued in Docket No. CP83–76–000.[1] The proposed abandonments will have no impact on Columbia's existing customers or affect Columbia's existing storage operations. The estimated cost for the Project is approximately $2.8 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 TYY, (202) 502–8659.

Any questions concerning this application should be directed to Dave Hammel, Director, Commercial & Regulatory Law, (832) 320–5861, *dave_hammel@tcenergy.com,* Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, TX 77002–2700.

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 March 15, 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 NGA,[2] any person [3] 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,[4] and must be submitted by the protest deadline, which is March 15, 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 Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is March 15, 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 March 15, 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.

[1] *Columbia Gas Transmission Corporation* (predecessor to Columbia Gas Transmission, LLC), 22 FERC 62,029 (1983).

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

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 CP21–23–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below.[8] Your submission must reference the Project docket number CP21–23–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: dave_*hammel@tcenergy.com,* 700 Louisiana Street, Suite 700, Houston, TX 77002–2700. 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: January 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–01347 Filed 1–21–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utilty Company Status

HDSI, LLC	EG21–2–000
Wapello Solar LLC	EG21–3–000
Upton County 2 Solar	EG21–5–000
Harts Mill TE Holdings LLC	EG21–6–000
Henrietta D Energy Storage LLC.	EG21–7–000
Orange County Energy Storage 2 LLC.	EG21–8–000
Orange County Energy Storage 3 LLC.	EG21–9–000
Flat Ridge 3 Wind Energy, LLC.	EG21–10–000
Nutmeg Solar, LLC	EG21–11–000
BT Cooke Solar, LLC	EG21–12–000
Rancho Seco Solar, LLC	EG21–14–000
BT Kellam Solar, LLC	EG21–15–000
Todd Solar LLC	EG21–16–000
Groton Station Fuel Cell, LLC.	EG21–17–000
Sigurd Solar LLC	EG21–19–000
Conrad (Hawarden) Ltd	FC21–1–000

Take notice that during the month of December 2020, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2020).

Dated: January 14, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–01351 Filed 1–21–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9054–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed January 11, 2021 10 a.m. EST

Through January 14, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210006, Final Supplement, NRCS, MO, East Locust Creek Watershed Revised Plan, *Review Period Ends*: 02/22/2021, *Contact:* Chris Hamilton 573–876–0901.

EIS No. 20210007, Draft, USFS, DC, 36 CFR 228, Subpart A, Locatable Minerals, *Comment Period Ends:* 03/22/2021, *Contact:* Michael Fracasso 303–241–3330.

EIS No. 20210008, Final, BLM, CA, Crimson Solar Project Final Environmental Impact Statement and Proposed Land Use Amendment to the California Desert Conservation Area Plan, *Review Period Ends:* 02/22/2021, *Contact:* Miriam Liberatore 541–618–2200.

EIS No. 20210009, Final, FTA, PA, King of Prussia Rail Extension Project, *Contact:* Tim Lidiak 215–656–7084.

Under 23 U.S.C. 139(n)(2), FTA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20210010, Draft, FRA, MD, Draft Environmental Impact Statement and Draft Section 4(f) Evaluation Baltimore-Washington Superconducting MAGLEV Project, *Comment Period Ends:* 04/22/2021, *Contact:* Brandon Bratcher 202–493–0844.

Amended Notice

EIS No. 20200215, Draft, USFS, OR, Stella Restoration Project, *Comment Period Ends:* 01/12/2021, *Contact:* Elizabeth Bly 541–560–3465.

Revision to FR Notice Published 10/30/2020; Correction to Comment Period Due Date from December 14, 2020 to January 12, 2021.

EIS No. 20200238, Draft, USFS, OR, VOID—Stella Restoration Project,

[7] 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.

[8] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Period Ends: 01/12/2021, *Contact:* Elizabeth Bly 541–560–3465.

Revision to FR Notice Published 11/27/2020; Retracted due to erroneous filing.

Dated: January 15, 2021.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–01365 Filed 1–21–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 18–295; GN Docket No. 17–183; DA 21–7; FRS 17404]

Office of Engineering & Technology Seeks Additional Information Regarding Client-to-Client Device Communications in the 6 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Office of Engineering and Technology seeks additional information to supplement the record on whether the Commission should permit direct communications between unlicensed 6 GHz band client devices.

DATES: Comments are due on or before February 22, 2021, and reply comments are due on or before March 23, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nicholas Oros, Office of Engineering and Technology, 202–418–0636, *Nicholas.Oros@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, *Public Notice,* DA 21–7, ET Docket No. 18–295, GN Docket No. 17–183, released January 11, 2021. The full text of this document is available for public inspection and can be downloaded at: *https://www.fcc.gov/document/oet-seeks-info-6-ghz-u-nii-client-client-device-communications* or by using the search function for ET Docket No. 18–295 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Synopsis

1. In the *6 GHz Further Notice,* the Commission sought comment on additional actions that it should take to further expand unlicensed operations in the 6 GHz band through revisions to the existing rules for standard-power or low-power indoor operations or by authorizing a third type of operation, very low power operations. Among the comments filed, unlicensed proponents requested that the Commission modify its low-power indoor device rules to permit client-to-client device communications, which they assert would enable additional types of innovative unlicensed operations in the band. The Fixed Wireless Communications Coalition opposes any such revisions and asserts that there is no record support for permitting client-to-client communications in this band.

2. In the *6 GHz Order,* the Commission prohibited unlicensed client devices from acting as ''mobile hotspots'' because ''[p]ermitting a client device operating under the control of an access point to authorize the operation of additional client devices could potentially increase the distance between these additional client devices and the access point and increase the potential for harmful interference to fixed service receivers or electronic news gathering operations.'' To avoid this situation, the Commission's rules prohibit 6 GHz U–NII client devices from directly communicating with one another. The Commission did not, however, examine whether a more limited approach to indoor client-to-client communications within the ambit of the *6 GHz Notice* should be permissible—*e.g.,* when a client is *not* acting as a mobile hotspot. Accordingly, Apple, Broadcom et al. suggest that client devices be permitted to directly communicate with each other if they can decode an enabling signal transmitted by a low-power indoor access point within the last four seconds. They suggest that the Commission could further constrain client-to-client communications by requiring that the enabling signal be received at a signal strength of at least −99 dBm/MHz. According to Apple, Broadcom et al., as a client device could communicate at this signal level with a low-power indoor access point in a traditional access-point-to-client topology under the existing rules, this would ensure each individual client participating in client-to-client communications is safely inside the area where a client device is authorized to communicate with an access point

3. The Commission takes this opportunity to invite interested parties to supplement the record, for the Commission's consideration, on whether and under what circumstances client devices could be permitted to directly communicate with each other in a limited manner consistent with the rationale underlying the Commission's decisions in the *6 GHz Order* that were targeted at protecting incumbent licensed services. More specifically, the Commission invites comment on whether to permit 6 GHz U–NII client devices to directly communicate when they are under the control of or have received an enabling signal from a low-power indoor access point. As an initial matter, commenters should explain how they define an enabling signal, what characteristics it must have, how it is similar or different from signals, such as beacons, that access points already use to connect with client devices, and the degree to which an enabling signal would tether a client device not under the direct control of an access point to that access point. Commenters should also provide information on the types of applications that direct client-to-client communications would enable that cannot be accomplished by communications through an access point. In addition, commenters advocating for rule changes should address whether direct client-to-client communications should be under the current power limits or restricted to lower power limits to reduce the potential for harmful interference to incumbent operations. In this connection, the Commission notes that client devices under the control of a low-power indoor access point are permitted to operate up to 24 dBm EIRP over 320-megahertz channels (or −1 dBm/MHz).

4. As the 6 GHz Order explained, the requirement that 6 GHz U–NII client devices operate under the control of either a standard-power or low-power indoor access point is designed to prevent client devices from causing harmful interference by limiting their operation either to outdoors in areas where the AFC system has determined that interference will not occur or to indoor locations where other factors such as building entry loss prevent harmful interference. In particular, operations under the control of a low-power indoor access point is aimed at restricting operation of the client devices to indoor locations. It may be possible for a client device to receive an enabling signal from an access point even when the enabling signal is too weak to enable the client device to conduct communications with the access point. In such situations, the weak received signal level makes it more likely that the client device could be outdoors. By requiring the enabling signal have a specific signal strength, this problem could be potentially avoided. If the Commission were to adopt rules permitting client-to-client communications, should it require the enabling signal from the low-power

indoor access point to be received by the client device with a particular signal level? Apple, Broadcom et al. suggested −99 dBm/MHz: Is this level appropriate? If not, what signal level would be appropriate for this purpose? How can a specific signal level be correlated with the current requirement that the client device be under the control of an access point? For example, under such an approach, should the enabling signal level be of such a strength to effectively require that the signal levels between the access point and client device be sufficiently strong to permit bi-directional communications between the client devices and the access point, thereby ensuring that both client devices are sufficiently close to the access point? How frequently should a client device be required to receive an enabling signal to continue transmitting to another client device?

5. If permitted, should the client devices be limited to receiving an enabling signal from the same access point or could client-to-client communications be permitted so long as each client device receives an enabling signal from any authorized access point? Apple, Broadcom et al.'s suggestion would potentially permit two client devices to communicate even if they receive enabling signals from two different access points. For example, client devices in two different buildings receiving enabling signals from different low-power indoor access points could attempt to communicate with each other. Would permitting this to occur increase the potential for the client devices to cause harmful interference to licensed services? How would a requirement for both devices to receive an enabling signal from the same access point be implemented? Or should other configurations be permitted? For example, could a client device controlled by a standard power access point be permitted to communicate with a client device controlled by a low-power indoor access point? Could client-to-client communications be permitted between devices when both clients are controlled by a standard power access point? If so, are any changes needed to the AFC systems? Must the enabling signal be received on the same channel for each device under any of the scenarios contemplated? Under any envisioned client-to-client communication scenario, commenters should provide detailed descriptions of how such communications can be enabled including how such communications fit under the current rules that limit client devices to operating only under the control of a standard power access point or a low-power indoor access point or whether, and which, rules would need to be modified. Commenters should provide detailed analysis of how any client-to-client communication configurations they prefer would protect incumbent operations from harmful interference. Finally, commenters should provide any other information they believe relevant to evaluating whether direct client-to-client communications consistent with the rationale of the Commission in the 6 GHz Order should be permitted, including any alternative methods or necessary rule changes not directly noted above.

Federal Communications Commission.

Ronald T. Repasi,

Acting Chief, Office of Engineering and Technology.

[FR Doc. 2021–01404 Filed 1–21–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0686; FRS 17401]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 23, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0686.

Title: International Section 214 Process and Tariff Requirements, 47 CFR Sections 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.22, 63.24, 63.25 and 1.1311.

Form No.: International Section 214—New Authorization; International Section 214 Authorization—Transfer of Control/Assignment; International Section 214—Special Temporary Authority and International Section 214—Foreign Carrier Affiliation Notification.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 268 respondents; 455 responses.

Estimated Time per Response: 1 hour–20 hours.

Frequency of Response: On occasion, annual and quarterly reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for Part 1 of this information collection is contained in 47 U.S.C 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e). The statutory authority for Part 63 of this information collection is contained in Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403, and 651 of the Communications Act of 1934, as amended, and 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571. The statutory authority for this information collection is also contained in the Cable Landing License Act, Executive Order 10530 and the Coastal Zone Management Act, 16 U.S.C. 1456.

Total Annual Burden: 1,677 hours.

Annual Cost Burden: $419,390.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension after this 60-day comment period in order to obtain the full three-year clearance.

The information is used by the Federal Communications Commission (Commission) staff in carrying out its duties under the Communications Act. The information collections pertaining to Part 1 of the rules are necessary to determine whether the Commission should grant a license for proposed submarine cables landing in the United States. Pursuant to Executive Order No. 10530, the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission obtains the approval from the State Department and seeks advice from other government agencies as appropriate. The information collections pertaining to Part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity.

If the collections are not conducted or are conducted less frequently, applicants will not be able to obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Communications Act of 1934 and the Cable Landing License Act. In addition, without the information collections, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Trade Organization (WTO) Basic Telecom Agreement because these collections are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies' and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–01367 Filed 1–21–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

TIME AND DATE: 10:22 a.m. on Tuesday, January 19, 2021.

PLACE: The meeting was held via video conference on the internet.

STATUS: Closed.

MATTERS TO BE CONSIDERED: In calling the meeting, the Board determined, on motion of Director Martin J. Gruenberg, seconded by Director Kathleen L. Kraninger (Director, Consumer Financial Protection Bureau), and concurred in by Director Blake Paulson (Acting Comptroller of the Currency), and Chairman Jelena McWilliams, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Ms. Debra A. Decker, Deputy Executive Secretary of the Corporation, at 202–898–8748.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–01545 Filed 1–19–21; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Meeting To Be Held With Less Than Seven Days Advance Notice

TIME AND DATE: 10:00 a.m. on Tuesday, January 19, 2021.

PLACE: The meeting was held via video conference on the internet and was webcast to the public.

MATTERS TO BE CONSIDERED: Pursuant to the provisions of the Government in the Sunshine Act, notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors met in open session at 10:00 a.m. on Tuesday, January 19, 2021, to consider the following matters:

Summary Agenda

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Final Rule on Role of Supervisory Guidance.

Memorandum and resolution re: Notice of Proposed Rule on Rescission and Removal of Transferred OTS Regulations, Definitions for Regulations Affecting All State Savings Associations (Part 390 Subpart Q).

Memorandum and resolution re: Notice of Proposed Rulemaking on Removal of Transferred OTS Regulations Regarding Securities Offerings of State Savings Associations, Rescission of Statement of Policy on the Use of Offering Circulars, Proposed Rulemaking Regarding Securities Offerings by State Nonmember Banks and State Savings Associations, and Other, Technical Amendments.

Report of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Revisions to the FDIC's Guidelines for Appeals of Material Supervisory Determinations.

In calling the meeting, the Board determined, on motion of Director Martin J. Gruenberg, seconded by Director Kathleen Kraninger (Director, Consumer Financial Protection Bureau), concurred in by Director Blake Paulson (Acting Comptroller of the Currency), and Chairman Jelena McWilliams, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on January 15, 2021, was practicable.

Dated this the 19th day of January, 2021.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–01544 Filed 1–19–21; 4:15 pm]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2021—01]

Filing Dates for the Louisiana Special Election in the 2nd Congressional District Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Louisiana has scheduled a Special General Election on March 20,

2021, to fill its U.S. House of Representatives seat in the 2nd Congressional District being vacated by Representative Cedric L. Richmond. Under Louisiana law, a majority winner in a Special General Election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on April 24, 2021, between the top two vote-getters. Political committees participating in the Louisiana special elections are required to file pre- and post-election reports. Filing deadlines for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

If two elections are held, all principal campaign committees of candidates who participate in both the Louisiana Special General and Special Runoff Elections shall file a 12-day Pre-General Report on March 8, 2021; a 12-day Pre-Runoff Report on April 12, 2021; and a 30-day Post-Runoff Report on May 24, 2021. Principal campaign committees of candidates who participate only in the Special General Election shall file a 12-day Pre-General Report on March 8, 2021. (See charts below for the closing date for each report.)

If only one election is held, all principal campaign committees of candidates in the Special General Election shall file a 12-day Pre-General Report on March 8, 2021; and a 30-day Post-General Report on April 19, 2021. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly in 2021 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Louisiana Special General and/or Special Runoff Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Louisiana Special General and/or Special Runoff Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Louisiana special elections may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

The lobbyist bundling disclosure threshold for calendar year 2020 was $19,000. This threshold amount may change in 2021 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the **Federal Register** and post it on its website. 11 CFR 104.22(g) and 110.17(e)(2). For more information on these requirements, see **Federal Register** Notice 2009–03, 74 FR 7285 (February 17, 2009).

CALENDAR OF REPORTING DATES FOR LOUISIANA SPECIAL ELECTION(S)

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
IF *ONLY* ONE ELECTION IS HELD, CAMPAIGN COMMITTEES INVOLVED IN THE SPECIAL GENERAL (03/20/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Post-General	04/09/2021	04/19/2021	04/19/2021
April Quarterly		--- WAIVED ---	
July Quarterly	06/30/2021	07/15/2021	07/15/2021
IF *ONLY* ONE ELECTION IS HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN THE SPECIAL GENERAL (03/20/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Post-General	04/09/2021	04/19/2021	04/19/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021
IF TWO ELECTIONS ARE HELD, CAMPAIGN COMMITTEES INVOLVED IN *ONLY* THE SPECIAL GENERAL (03/20/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
April Quarterly	03/31/2021	04/15/2021	04/15/2021
IF TWO ELECTIONS ARE HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN *ONLY* THE SPECIAL GENERAL (03/20/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021
IF TWO ELECTIONS ARE HELD, CAMPAIGN COMMITTEES INVOLVED IN *BOTH* THE SPECIAL GENERAL (03/20/2021) AND SPECIAL RUNOFF (04/24/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Pre-Runoff	04/04/2021	04/09/2021	04/12/2021

CALENDAR OF REPORTING DATES FOR LOUISIANA SPECIAL ELECTION(S)—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
April Quarterly		--- WAIVED ---	
Post-Runoff	05/14/2021	05/24/2021	05/24/2021
July Quarterly	06/30/2021	07/15/2021	07/15/2021
IF TWO ELECTIONS ARE HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN *BOTH* THE SPECIAL GENERAL (03/20/2021) AND SPECIAL RUNOFF (04/24/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Pre-Runoff	04/04/2021	04/09/2021	04/12/2021
Post-Runoff	05/14/2021	05/24/2021	05/24/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021
IF TWO ELECTIONS ARE HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN *ONLY* THE SPECIAL RUNOFF (04/24/2021) MUST FILE:			
Pre-Runoff	04/04/2021	04/09/2021	04/12/2021
Post-Runoff	05/14/2021	05/24/2021	05/24/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail must be received by close of business on the last business day before the deadline.

Dated: January 15, 2021.

On behalf of the Commission,

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

[FR Doc. 2021–01395 Filed 1–21–21; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, January 26, 2021 at 10:00 a.m. and its continuation at the conclusion of the open meeting on January 28, 2021.

PLACE: 1050 First Street NE, Washington, DC, (This meeting will be a virtual meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–01573 Filed 1–19–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2021–02]

Filing Dates for the Louisiana Special Election in the 5th Congressional District Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Louisiana has scheduled a Special General Election on March 20, 2021, to fill its U.S. House of Representatives seat in the 5th Congressional District following the passing of Representative-elect Luke J. Letlow. Under Louisiana law, a majority winner in a Special General Election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on April 24, 2021, between the top two vote-getters. Political committees participating in the Louisiana special elections are required to file pre- and post-election reports. Filing deadlines for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street, NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

If two elections are held, all principal campaign committees of candidates who participate in both the Louisiana Special General and Special Runoff Elections shall file a 12-day Pre-General Report on March 8, 2021; a 12-day Pre-Runoff Report on April 12, 2021; and a 30-day Post-Runoff Report on May 24, 2021. Principal campaign committees of candidates who participate only in the Special General Election shall file a 12-day Pre-General Report on March 8, 2021. (See charts below for the closing date for each report.)

If only one election is held, all principal campaign committees of candidates in the Special General Election shall file a 12-day Pre-General Report on March 8, 2021; and a 30-day Post-General Report on April 19, 2021. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly in 2021 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Louisiana Special General and/or Special Runoff Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Louisiana Special

General and/or Special Runoff Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Louisiana special elections may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

The lobbyist bundling disclosure threshold for calendar year 2020 was $19,000. This threshold amount may change in 2021 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the **Federal Register** and post it on its website. 11 CFR 104.22(g) and 110.17(e)(2). For more information on these requirements, see **Federal Register** Notice 2009–03, 74 FR 7285 (February 17, 2009).

CALENDAR OF REPORTING DATES FOR LOUISIANA SPECIAL ELECTION(S)

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
IF *ONLY* ONE ELECTION IS HELD, CAMPAIGN COMMITTEES INVOLVED IN THE SPECIAL GENERAL (03/20/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Post-General	04/09/2021	04/19/2021	04/19/2021
April Quarterly		--- WAIVED ---	
July Quarterly	06/30/2021	07/15/2021	07/15/2021
IF *ONLY* ONE ELECTION IS HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN THE SPECIAL GENERAL (03/20/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Post-General	04/09/2021	04/19/2021	04/19/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021
IF TWO ELECTIONS ARE HELD, CAMPAIGN COMMITTEES INVOLVED IN *ONLY* THE SPECIAL GENERAL (03/20/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
April Quarterly	03/31/2021	04/15/2021	04/15/2021
IF TWO ELECTIONS ARE HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN *ONLY* THE SPECIAL GENERAL (03/20/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021
IF TWO ELECTIONS ARE HELD, CAMPAIGN COMMITTEES INVOLVED IN *BOTH* THE SPECIAL GENERAL (03/20/2021) AND SPECIAL RUNOFF (04/24/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Pre-Runoff	04/04/2021	04/09/2021	04/12/2021
April Quarterly		--- WAIVED ---	
Post-Runoff	05/14/2021	05/24/2021	05/24/2021
July Quarterly	06/30/2021	07/15/2021	07/15/2021
IF TWO ELECTIONS ARE HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN *BOTH* THE SPECIAL GENERAL (03/20/2021) AND SPECIAL RUNOFF (04/24/2021) MUST FILE:			
Pre-General	02/28/2021	03/05/2021	03/08/2021
Pre-Runoff	04/04/2021	04/09/2021	04/12/2021
Post-Runoff	05/14/2021	05/24/2021	05/24/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021
IF TWO ELECTIONS ARE HELD, PACS AND PARTY COMMITTEES NOT FILING MONTHLY INVOLVED IN *ONLY* THE SPECIAL RUNOFF (04/24/2021) MUST FILE:			
Pre-Runoff	04/04/2021	04/09/2021	04/12/2021
Post-Runoff	05/14/2021	05/24/2021	05/24/2021
Mid-Year	06/30/2021	07/31/2021	[2] 07/31/2021

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail must be received by close of business on the last business day before the deadline.

Dated: January 15, 2021.

On behalf of the Commission.

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

[FR Doc. 2021–01405 Filed 1–21–21; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2021–N–1]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has adjusted the cap on average total assets that is used in determining whether a Federal Home Loan Bank (Bank) member qualifies as a ''community financial institution'' (CFI) to $1,239,000,000, based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL). These changes took effect on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: James Hedrick, Division of Federal Home Loan Bank Regulation, (202) 649–3319, *James.Hedrick@fhfa.gov;* or R. Winston Sale, Assistant General Counsel, (202) 649–3081, *Winston.Sale@fhfa.gov,* (not toll-free numbers), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act) confers upon insured depository institutions that meet the statutory definition of a CFI certain advantages over non-CFI insured depository institutions in qualifying for Bank membership, and in the purposes for which they may receive long-term advances and the collateral they may pledge to secure advances.[1] Section 2(10)(A) of the Bank Act and § 1263.1 of FHFA's regulations define a CFI as any Bank member the deposits of which are insured by the Federal Deposit Insurance Corporation and that has average total assets below the statutory cap.[2] The Bank Act was amended in 2008 to set the statutory cap at $1 billion and to require FHFA to adjust the cap annually to reflect the percentage increase in the CPI–U, as published by the DOL.[3] For 2020, FHFA set the CFI asset cap at $1,224,000,000, which reflected a 2.1 percent increase over 2019, based upon the increase in the CPI–U between 2019 and 2020.[4]

II. The CFI Asset Cap for 2021

As of January 1, 2021, FHFA has increased the CFI asset cap to $1,239,000,000, which reflects a 1.2 percent increase in the unadjusted CPI–U from November 2019 to November 2020. Consistent with the practice of other Federal agencies, FHFA bases the annual adjustment to the CFI asset cap on the percentage increase in the CPI–U from November of the year prior to the preceding calendar year to November of the preceding calendar year, because the November figures represent the most recent available data as of January 1st of the current calendar year. The new CFI asset cap was obtained by applying the percentage increase in the CPI–U to the unrounded amount for the preceding year and rounding to the nearest million, as has been FHFA's practice for all previous adjustments.

In calculating the CFI asset cap, FHFA uses CPI–U data that have not been seasonally adjusted (*i.e.,* the data have not been adjusted to remove the estimated effect of price changes that normally occur at the same time and in about the same magnitude every year). The DOL encourages use of unadjusted CPI–U data in applying ''escalation'' provisions such as that governing the CFI asset cap, because the factors that are used to seasonally adjust the data are amended annually, and seasonally adjusted data that are published earlier are subject to revision for up to five years following their original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered.

Andre D. Galeano,

Deputy Director, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency.

[FR Doc. 2021–01267 Filed 1–21–21; 8:45 am]

BILLING CODE 8070–01–P

[1] *See* 12 U.S.C. 1424(a), 1430(a).

[2] *See* 12 U.S.C. 1422(10)(A); 12 CFR 1263.1.

[3] *See* 12 U.S.C. 1422(10)(B); 12 CFR 1263.1 (defining the term *CFI asset cap*).

[4] *See* 85 FR 3680 (Jan. 22, 2020).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: January 26, 2021 at 10:00 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–415–527–5035, Code: 199 601 5134; or via web: *https://tspmeet.webex.com/tspmeet/onstage/g.php?MTID=e84524dda563a8355830b6e7b51e26b53.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the December 21, 2020 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
3. Quarterly Reports
   (c) Investment Policy
   (d) Budget Review
   (e) Audit Status
4. Internal Audit Update
5. Annual Expense Ratio Review
6. Multi-asset Manager Update
7. Recordkeeping Services Acquisition (RKSA) Update

Closed Session

8. Information covered under 5 U.S.C. 552b (c)(9)(B).

Authority: 5 U.S.C. 552b (e)(1).

Dated: January 14, 2021.

Dharmesh Vashee,

Acting General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2021–01321 Filed 1–21–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001; Docket No. 2020–0053; Sequence No. 14]

Submission for OMB Review; Standard Form 28, Affidavit of Individual Surety

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the

Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding the Standard Form 28, Affidavit of Individual Surety.

DATES: Submit comments on or before February 22, 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.

Additionally, submit a copy to GSA through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control number 9000–0001, Standard Form 28, Affidavit of Individual Surety. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB control number, Title, and any Associated Form(s)

9000–0001, Standard Form 28, Affidavit of Individual Surety.

B. Needs and Uses

This clearance covers the information that offerors or contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirement:

• *Standard Form (SF) 28, Affidavit of Individual Surety.* This form is used by all executive agencies, including the Department of Defense (DoD), to obtain information from individuals wishing to serve as sureties to Government bonds. Offerors and contractors may use an individual surety as security for bonds required under a solicitation or contract for supplies or services (including construction). It is an elective decision on the part of the offeror or contractor to use individual sureties instead of other available sources of surety or sureties for Government bonds.

The contracting officer uses the information on the SF 28 to determine the acceptability of individuals proposed as sureties.

C. Annual Burden

Respondents: 10.

Total Annual Responses: 20.

Total Burden Hours: 6.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 85 FR 70151, on November 4, 2020. One comment was received; however, it did not change the estimate of the burden.

Comment: The commenter requested the FAR Council implement FAR Case 2017–003, Individual Sureties, and, once implemented, create the necessary reporting requirements that will mitigate, if not eliminate, instances where individual surety bonds are accepted with worthless assets or with assets that are beyond the control of contracting officials. Accordingly, the commenter finds the renewal/revision of the information collection premature because it is uncertain what types of information should be solicited on the SF 28.

Response: The renewal of the information collection is required to ensure compliance with the Paperwork Reduction Act as the current approval for OMB Control number 9000–0001 expires on February 28,2021. As stated in section VII. of the final rule preamble for FAR Case 2017–003 (86 FR 3682), changes to the SF 28 are needed to update the language in the form to be consistent with the changes to the FAR text. The modification of the SF 28 does not impose additional information collection requirements.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–01334 Filed 1–21–21; 8:45 am]

BILLING CODE 6820–EP–P

UNITED STATES AGENCY FOR GLOBAL MEDIA

USAGM Performance Review Board Members

AGENCY: United States Agency for Global Media.

ACTION: Notice.

SUMMARY: The United States Agency for Global Media (USAGM) announces the members of its SES Performance Review Board (PRB).

ADDRESSES: USAGM Office of Human Resources, 330 Independence Ave SW, Washington, DC 20237

FOR FURTHER INFORMATION CONTACT: Ellona Fritschie, Business Review Coordinator, at *efritschie@usagm.gov* or (202) 382–7500.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314, USAGM publishes this notice announcing the individuals who will serve as members of the PRB for a term of one year. The PRB is responsible for: (1) Reviewing performance appraisals and ratings of Senior Executive Service and Senior Level members; and (2) making recommendations on other performance management issues, such as pay adjustments, bonuses, and Presidential Rank Awards. The names, position titles, and appointment types of each member of the PRB are set forth below:

1. James Reeves, Chief Information Officer, Career SES
2. Terry Balazs, Director of Technology, Services, and Innovation, Career SES
3. Gary Thatcher, Associate Director for Program Support, Career SES
4. Kelu Chao, Director for Language Programming, Voice of America, Career SES

Dated: January 14, 2021.

Daniel Rosenhotlz,

Attorney-Advisor, Policy Officer, U.S. Agency for Global Media.

[FR Doc. 2021–01360 Filed 1–21–21; 8:45 am]

BILLING CODE 8610–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on December 1, 2020, through December 31, 2020. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT)**, with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Thomas J. Engels,

Administrator.

List of Petitions Filed

1. Edward Ries, Avon, Ohio, Court of Federal Claims No: 20–1711V
2. Allison Reilly, Boston, Massachusetts, Court of Federal Claims No: 20–1712V
3. Gail Wiggins, Renton, Washington, Court of Federal Claims No: 20–1713V
4. Gorden Collins, Biddeford, Maine, Court of Federal Claims No: 20–1715V
5. Amanda Trombatura on behalf of G.T., Jackson, New Jersey, Court of Federal Claims No: 20–1716V
6. Lisa Plaza, Taylor, Michigan, Court of Federal Claims No: 20–1717V
7. John Robinson, Wheaton, Illinois, Court of Federal Claims No: 20–1718V
8. Taner Baylee Nguyen, Fort Campbell, Kentucky, Court of Federal Claims No: 20–1719V
9. Michael Mantagas, Manalapan, New Jersey, Court of Federal Claims No: 20–1720V
10. Jeanille Gatta, Wilmington, Delaware, Court of Federal Claims No: 20–1721V
11. Stacey Beckerley, San Diego, California, Court of Federal Claims No: 20–1723V
12. Jennifer Powell, Tyler, Texas, Court of Federal Claims No: 20–1726V
13. Sovanna Sin, Stockton, California, Court of Federal Claims No: 20–1727V
14. Yvonne Nelson-Eastman, Howard Beach, New York, Court of Federal Claims No: 20–1728V
15. Brian Eveland, Osage Beach, Missouri, Court of Federal Claims No: 20–1729V
16. Steven Rothenberg, Glynco, Georgia, Court of Federal Claims No: 20–1730V
17. Jennifer Salvaggio, Boston, Massachusetts, Court of Federal Claims No: 20–1731V
18. Lori DeCostanzo, New York, New York, Court of Federal Claims No: 20–1733V
19. Stephanie Banks and Bradley Banks on behalf of B.B., Orange, California, Court of Federal Claims No: 20–1734V
20. Jennifer Craft, Media, Pennsylvania, Court of Federal Claims No: 20–1735V
21. Brenda Lindsey, Richmond, Virginia, Court of Federal Claims No: 20–1737V
22. Michael Gauer, Boise, Idaho, Court of Federal Claims No: 20–1738V

23. Kerry Grant, Canastota, New York, Court of Federal Claims No: 20–1740V
24. Keira S. Brooke, Middletown, Ohio, Court of Federal Claims No: 20–1741V
25. Pamela Cavanagh, Boston, Massachusetts, Court of Federal Claims No: 20–1742V
26. CaSaundra Mullen, Boston, Massachusetts, Court of Federal Claims No: 20–1743V
27. Kevin Reddington, North Wales, Pennsylvania, Court of Federal Claims No: 20–1744V
28. Sena Slaughter, Fayetteville, Arkansas, Court of Federal Claims No: 20–1745V
29. Sheryl Turk, Oceanside, New York, Court of Federal Claims No: 20–1747V
30. Pamela Caswell, Escanaba, Michigan, Court of Federal Claims No: 20–1749V
31. Mairi Luce, Boston, Massachusetts, Court of Federal Claims No: 20–1750V
32. Margaret Khan, Farmingdale, New York, Court of Federal Claims No: 20–1751V
33. Dolores Ramirez, Glendale, Arizona, Court of Federal Claims No: 20–1752V
34. Tawnette Harris, Renton, Washington, Court of Federal Claims No: 20–1753V
35. Tiffany Madrid, Orlando, Florida, Court of Federal Claims No: 20–1754V
36. Malanda Dixon, Dickson, Tennessee, Court of Federal Claims No: 20–1755V
37. Danielle Rodriguez, Kissimmee, Florida, Court of Federal Claims No: 20–1756V
38. Joseph Ferguson, Johnson City, New York, Court of Federal Claims No: 20–1757V
39. Lindsay Nowland, Baltimore, Maryland, Court of Federal Claims No: 20–1758V
40. Rosemary Chaves, Ft. Myers, Florida, Court of Federal Claims No: 20–1759V
41. Jacqueline ''Jackie'' Smith, Owatonna, Minnesota, Court of Federal Claims No: 20–1760V
42. Christyne Ruffolo, Boston, Massachusetts, Court of Federal Claims No: 20–1761V
43. James Vaughan, Crofton, Maryland, Court of Federal Claims No: 20–1762V
44. Jaclyn McNally, Chicago, Illinois, Court of Federal Claims No: 20–1763V
45. Maya Federman, Montclair, California, Court of Federal Claims No: 20–1764V
46. Roland O'Connor, Spring City, Pennsylvania, Court of Federal Claims No: 20–1765V
47. Ellen Decker, LaVale, Maryland, Court of Federal Claims No: 20–1766V
48. Mayra Callejas, Katy, Texas, Court of Federal Claims No: 20–1767V
49. Kimberly Neighbors, Tulsa, Oklahoma, Court of Federal Claims No: 20–1768V
50. Theresa Copley-Smith, Boston, Massachusetts, Court of Federal Claims No: 20–1769V
51. Richard Stavale, Portland, Oregon, Court of Federal Claims No: 20–1770V
52. Joel Wilson, Richfield, Minnesota, Court of Federal Claims No: 20–1771V
53. Joyce Kasper, Bellevue, Washington, Court of Federal Claims No: 20–1772V
54. Elizabeth Aldea-Cruz, Washington, District of Columbia, Court of Federal Claims No: 20–1773V
55. Danielle Allen, Washington, District of Columbia, Court of Federal Claims No: 20–1774V
56. Joel Alvarez, Washington, District of Columbia, Court of Federal Claims No: 20–1775V
57. Juanito Aquino, Washington, District of Columbia, Court of Federal Claims No: 20–1776V
58. Lea Ayotte, Washington, District of Columbia, Court of Federal Claims No: 20–1777V
59. Nancy Bernhardt, Washington, District of Columbia, Court of Federal Claims No: 20–1778V
60. Jessica Blankenship, Washington, District of Columbia, Court of Federal Claims No: 20–1779V
61. George Potak, Mesquite, Nevada, Court of Federal Claims No: 20–1780V
62. Lucinda Long, Port St. Lucie, Florida, Court of Federal Claims No: 20–1781V
63. Courtney Counts and Christopher Counts on behalf of M.C., Phoenix, Arizona, Court of Federal Claims No: 20–1782V
64. Laura Cosden, Gettysburg, Pennsylvania, Court of Federal Claims No: 20–1783V
65. Donna Smith, Boston, Massachusetts, Court of Federal Claims No: 20–1785V
66. Michele Nunziata, Rochester, New York, Court of Federal Claims No: 20–1786V
67. Judy Robinson, Bagram, Afghanistan, Court of Federal Claims No: 20–1787V
68. Sara J. White, North Tonawanda, New York, Court of Federal Claims No: 20–1788V
69. Annette Danielle Lucero, Clackamas, Oregon, Court of Federal Claims No: 20–1789V
70. Amanda McCartney, Ocala, Florida, Court of Federal Claims No: 20–1790V
71. Juliette Levy on behalf of J.L., Orange, California, Court of Federal Claims No: 20–1791V
72. David Stewart on behalf of J.S., Coos Bay, Oregon, Court of Federal Claims No: 20–1792V
73. Roxanne Cardinal, Boston, Massachusetts, Court of Federal Claims No: 20–1793V
74. Christine Kasulis, Boston, Massachusetts, Court of Federal Claims No: 20–1794V
75. Amanda DeCook, Concord, New Hampshire, Court of Federal Claims No: 20–1795V
76. Jason Loos, Rochester, Minnesota, Court of Federal Claims No: 20–1796V
77. Arkie Tucker-Corley, Lebanon, Virginia, Court of Federal Claims No: 20–1797V
78. Gerald Mesecher, John Day, Oregon, Court of Federal Claims No: 20–1798V
79. Andrew Harmon and Jill Harmon on behalf of K.H., Grand Junction, Colorado, Court of Federal Claims No: 20–1799V
80. Nada Resnik-McNenny, Lincoln, Nebraska, Court of Federal Claims No: 20–1800V
81. Carol Ann Girgenti, Newport Richey, Florida, Court of Federal Claims No: 20–1802V
82. Nicole Bingham, Salt Lake City, Utah, Court of Federal Claims No: 20–1803V
83. Deborah Mosora, Sharon, Pennsylvania, Court of Federal Claims No: 20–1804V
84. Jennifer Priest, Sarasota, Florida, Court of Federal Claims No: 20–1805V
85. Elaine Tornatore, Glassboro, New Jersey, Court of Federal Claims No: 20–1806V
86. Walter Corter, Seattle, Washington, Court of Federal Claims No: 20–1807V
87. Cindal Menard, Concord, New Hampshire, Court of Federal Claims No: 20–1809V
88. James Olsen, Harrison, Arkansas, Court of Federal Claims No: 20–1810V
89. Curtiss Gunter on behalf of Kelley Gunter, Albany, Kentucky, Court of Federal Claims No: 20–1812V
90. Linda Charlene Clifton, Perryville, Mississippi, Court of Federal Claims No: 20–1813V
91. Calvin Riley, Mount Pleasant, Texas, Court of Federal Claims No: 20–1814V

92. Michael J. Sayles, Ft. Worth, Texas, Court of Federal Claims No: 20–1817V
93. Jeffrey A. Fowler, Wellesley Hills, Massachusetts, Court of Federal Claims No: 20–1819V
94. James Barnett, Gainesville, Virginia, Court of Federal Claims No: 20–1820V
95. Felicia Inez Williams, Philadelphia, Pennsylvania, Court of Federal Claims No: 20–1821V
96. Angela D. Henderson, Roanoke, Virginia, Court of Federal Claims No: 20–1822V
97. Amanda Washkalavitch, Upland, Pennsylvania, Court of Federal Claims No: 20–1823V
98. Jill Nelson, Fergus Falls, Minnesota, Court of Federal Claims No: 20–1824V
99. Ernesto Cardenas, Skokie, Illinois, Court of Federal Claims No: 20–1825V
100. Kathy Emrich and Jeremy Emrich on behalf of K.E., North Charleston, South Carolina, Court of Federal Claims No: 20–1826V
101. Mohamed Omar, Boston, Massachusetts, Court of Federal Claims No: 20–1827V
102. Deanna Medina, Boston, Massachusetts, Court of Federal Claims No: 20–1828V
103. Tara Leach, Tamaqua, Pennsylvania, Court of Federal Claims No: 20–1829V
104. Christina Ramirez, Gainesville, Virginia, Court of Federal Claims No: 20–1830V
105. Nicole Fey, Boynton Beach, Florida, Court of Federal Claims No: 20–1832V
106. Jessica Puckett on behalf of E.P., Fort Mill, South Carolina, Court of Federal Claims No: 20–1833V
107. Will Faust, New York, New York, Court of Federal Claims No: 20–1835V
108. Wendy W. Coppack on behalf of Estate of Hazey Wilkinson, Deceased, Dothan, Alabama, Court of Federal Claims No: 20–1836V
109. Liesl Ries, Columbus, Ohio, Court of Federal Claims No: 20–1838V
110. Anne Garza, Southlake, Texas, Court of Federal Claims No: 20–1839V
111. Nubia Rivera, Philadelphia, Pennsylvania, Court of Federal Claims No: 20–1840V
112. Kathy Stiller, East Aurora, New York, Court of Federal Claims No: 20–1841V
113. Eve Bunting-Smith, White Plains, New York, Court of Federal Claims No: 20–1842V
114. Nelson Ferry, Murphysboro, Illinois, Court of Federal Claims No: 20–1843V
115. Fayth Brennan, Monticello, Minnesota, Court of Federal Claims No: 20–1844V
116. Sylvia Lyons, Chicago Heights, Illinois, Court of Federal Claims No: 20–1846V
117. Shawn Ramey, Troy, Michigan, Court of Federal Claims No: 20–1847V
118. Debra Heagle, Stevens Point, Wisconsin, Court of Federal Claims No: 20–1848V
119. Kathryn Vashro, New London, New Hampshire, Court of Federal Claims No: 20–1849V
120. Liana Krissoff, Boston, Massachusetts, Court of Federal Claims No: 20–1850V
121. Vicky Schultz, Boston, Massachusetts, Court of Federal Claims No: 20–1851V
122. Stacey Hurley, Newark, Delaware, Court of Federal Claims No: 20–1852V
123. Melissa Caparrelli, Plantation, Florida, Court of Federal Claims No: 20–1853V
124. Michelle Whitaker, Boston, Massachusetts, Court of Federal Claims No: 20–1855V
125. Tresa Burrell, Boston, Massachusetts, Court of Federal Claims No: 20–1856V
126. Gabriel Flores, Chicago, Illinois, Court of Federal Claims No: 20–1858V
127. Jared Stern, Chicago, Illinois, Court of Federal Claims No: 20–1860V
128. Kerri Blumenthal, Boston, Massachusetts, Court of Federal Claims No: 20–1861V
129. Shelly Priebe, Austin, Texas, Court of Federal Claims No: 20–1862V
130. Carol Powley, Middleburg, Pennsylvania, Court of Federal Claims No: 20–1863V
131. Barbara Brewer, Russellville, Alabama, Court of Federal Claims No: 20–1864V
132. Kathleen Clendenning, Evanston, Illinois, Court of Federal Claims No: 20–1865V
133. Lindsay Geraghty, Western Springs, Illinois, Court of Federal Claims No: 20–1866V
134. Linda Perrico, Boston, Massachusetts, Court of Federal Claims No: 20–1867V
135. Theresa Buoni, Boston, Massachusetts, Court of Federal Claims No: 20–1868V
136. Deanna Harris, Lewiston, Idaho, Court of Federal Claims No: 20–1869V
137. Gavin Roth, Lexington, Kentucky, Court of Federal Claims No: 20–1872V
138. Glenda Gotlieb, Suffern, New York, Court of Federal Claims No: 20–1873V
139. Bria Barry, Boston, Massachusetts, Court of Federal Claims No: 20–1874V
140. Lauren Browning, Glendale, California, Court of Federal Claims No: 20–1875V
141. Elizabeth Jones, Ocean Pines, Maryland, Court of Federal Claims No: 20–1876V
142. Catherine DiBiase, Warwick, Rhode Island, Court of Federal Claims No: 20–1877V
143. Bridget Strobl, Santa Cruz, California, Court of Federal Claims No: 20–1879V
144. Dorothy Sell, Boston, Massachusetts, Court of Federal Claims No: 20–1880V
145. Christine Harbison, Lafayette, Louisiana, Court of Federal Claims No: 20–1881V
146. Kelly Joyce, Boston, Massachusetts, Court of Federal Claims No: 20–1882V
147. Amanda Heneage, Columbia, South Carolina, Court of Federal Claims No: 20–1886V
148. Virginia Rossiter, New Hartford, New York, Court of Federal Claims No: 20–1888V
149. Donna M. Winters, Groveland, Florida, Court of Federal Claims No: 20–1890V
150. Don Brown, Washington, District of Columbia, Court of Federal Claims No: 20–1891V
151. Stefanie Herbert and Andrew Herbert on behalf of E.H., Houston, Texas, Court of Federal Claims No: 20–1892V
152. Carol Lee Evans, Washington, District of Columbia, Court of Federal Claims No: 20–1893V
153. George Brock, Eau Claire, Wisconsin, Court of Federal Claims No: 20–1894V
154. David B. Johnson, Washington, District of Columbia, Court of Federal Claims No: 20–1895V
155. Noel Fie, San Luis Obispo, California, Court of Federal Claims No: 20–1896V
156. Julie Finn, M.D., Farmington Hills, Michigan, Court of Federal Claims No: 20–1897V
157. Emily Fenster, Armonk, New York, Court of Federal Claims No: 20–1898V
158. Tina Wicks, Chesterfield, Missouri, Court of Federal Claims No: 20–1899V
159. Rebecca Joan Miller, Latrobe, Pennsylvania, Court of Federal Claims No: 20–1900V
160. Clare Dominque, Worcester, Massachusetts, Court of Federal Claims No: 20–1904V
161. Linda Timberlake, Peoria, Illinois, Court of Federal Claims No: 20–1905V

162. Rayford Harden, Loganville, Georgia, Court of Federal Claims No: 20–1906V
163. Mykayla Carollo, Winter Park, Florida, Court of Federal Claims No: 20–1907V
164. Alice Rivera, Vero Beach, Florida, Court of Federal Claims No: 20–1908V
165. Mackay Heasley, Washington, District of Columbia, Court of Federal Claims No: 20–1909V
166. Kayla Klinglesmith, Washington, District of Columbia, Court of Federal Claims No: 20–1910V
167. Benjamin Kochevar, Washington, District of Columbia, Court of Federal Claims No: 20–1911V
168. Ashley Koon, Washington, District of Columbia, Court of Federal Claims No: 20–1912V
169. Karen Labonte, Washington, District of Columbia, Court of Federal Claims No: 20–1913V
170. Andrea Lepera, Washington, District of Columbia, Court of Federal Claims No: 20–1914V
171. Anne Mathura, Washington, District of Columbia, Court of Federal Claims No: 20–1915V
172. Allison Miller, Washington, District of Columbia, Court of Federal Claims No: 20–1916V
173. Kimberely Mullins, Washington, District of Columbia, Court of Federal Claims No: 20–1917V
174. Alan Oka, Washington, District of Columbia, Court of Federal Claims No: 20–1918V
175. James Patterson, Washington, District of Columbia, Court of Federal Claims No: 20–1919V
176. Loni Sansevere, Margate, Florida, Court of Federal Claims No: 20–1920V
177. Theodore R. East, Jr., Glencoe, Alabama, Court of Federal Claims No: 20–1921V
178. Barbara Hickey, Staten Island, New York, Court of Federal Claims No: 20–1922V
179. James Hodge, Boston, Massachusetts, Court of Federal Claims No: 20–1923V
180. Ye Xia on behalf of Estate of S.L., Deceased, Boston, Massachusetts, Court of Federal Claims No: 20–1924V
181. Earl Ball, Boston, Massachusetts, Court of Federal Claims No: 20–1926V
182. Michael R. Pulley, Pikeville, North Carolina, Court of Federal Claims No: 20–1927V
183. Laurel Acosta, Boston, Massachusetts, Court of Federal Claims No: 20–1928V
184. Jennifer A. Clasen, New Berlin, Wisconsin, Court of Federal Claims No: 20–1929V
185. Menakshi Bhat, Boston, Massachusetts, Court of Federal Claims No: 20–1930V
186. Brian Chew, Eatontown, New Jersey, Court of Federal Claims No: 20–1931V
187. Joel Greco, Greensboro, North Carolina, Court of Federal Claims No: 20–1932V
188. Kathleen Mau, Cleveland, Ohio, Court of Federal Claims No: 20–1933V
189. James James, Boston, Massachusetts, Court of Federal Claims No: 20–1934V
190. Janet Forbes, Ocala, Florida, Court of Federal Claims No: 20–1935V
191. Daniel Miller, Boston, Massachusetts, Court of Federal Claims No: 20–1937V
192. Gregory Streeter, Morrisville, Vermont, Court of Federal Claims No: 20–1939V
193. Bernadette Strand, Oconomowoc, Wisconsin, Court of Federal Claims No: 20–1940V
194. Rose C. Williams, Kenner, Louisiana, Court of Federal Claims No: 20–1941V
195. Taone Randazzo, Boston, Massachusetts, Court of Federal Claims No: 20–1942V
196. Brenda Hedeen, Boston, Massachusetts, Court of Federal Claims No: 20–1943V
197. Mariell Meacham, New York, New York, Court of Federal Claims No: 20–1944V
198. James Crogan, Boston, Massachusetts, Court of Federal Claims No: 20–1945V
199. Daniel R. Cole, Sr., Somers Point, New Jersey, Court of Federal Claims No: 20–1946V
200. Cynthia V. Acheampong, Dumfries, Virginia, Court of Federal Claims No: 20–1947V
201. Sherry F. Mitchell, Collierville, Tennessee, Court of Federal Claims No: 20–1950V
202. Katie Danso-Danquah, Richmond, Virginia, Court of Federal Claims No: 20–1951V
203. Cathy Humerickhouse, Visalia, California, Court of Federal Claims No: 20–1953V
204. Kathy Foulker, Rockford, Illinois, Court of Federal Claims No: 20–1955V
205. Eva Ivey on behalf of M.I., Bastrop, Texas, Court of Federal Claims No: 20–1956V
206. Tanner Nadeau, Barron, Wisconsin, Court of Federal Claims No: 20–1957V
207. Harlan Field, Boston, Massachusetts, Court of Federal Claims No: 20–1958V
208. Allison A. Hayes, Grand Ledge, Michigan, Court of Federal Claims No: 20–1959V
209. Michele Snyder, Buffalo, New York, Court of Federal Claims No: 20–1961V
210. Debra Moore, Boston, Massachusetts, Court of Federal Claims No: 20–1962V
211. Ann Swales, California, Maryland, Court of Federal Claims No: 20–1963V
212. Andrew Newell, Terre Haute, Indiana, Court of Federal Claims No: 20–1964V
213. Mikael Langner, Boston, Massachusetts, Court of Federal Claims No: 20–1965V
214. Dawn Felton, Wake Forest, North Carolina, Court of Federal Claims No: 20–1969V
215. Don Shields, Houston, Texas, Court of Federal Claims No: 20–1970V
216. Eileen Smestad, Farmingdale, New York, Court of Federal Claims No: 20–1971V
217. Scott Southerland, St. Clair Shores, Michigan, Court of Federal Claims No: 20–1972V
218. Yolanda Marie Martinez, Alamosa, Colorado, Court of Federal Claims No: 20–1973V
219. Scott Southerland, St. Clair Shores, Michigan, Court of Federal Claims No: 20–1976V
220. Dana Smith, Fort Smith, Arizona, Court of Federal Claims No: 20–1977V
221. Sandra Jean Riffelmacher, Gloucester, Massachusetts, Court of Federal Claims No: 20–1980V
222. Shirley Scott, Flowood, Mississippi, Court of Federal Claims No: 20–1982V
223. Maria Mendez, Boston, Massachusetts, Court of Federal Claims No: 20–1985V
224. Curtis Ingram, Boston, Massachusetts, Court of Federal Claims No: 20–1987V
225. Nancy Lee McCarn, Cape Coral, Florida, Court of Federal Claims No: 20–1988V
226. Carol Preis, Garden City, New Jersey, Court of Federal Claims No: 20–1989V
227. Desiree Savage-Davis, Boston, Massachusetts, Court of Federal Claims No: 20–1990V
228. Emily Smith, Toledo, Ohio, Court of Federal Claims No: 20–1993V
229. Patricia Doyle, Jonesboro, Georgia, Court of Federal Claims No: 20–1994V
230. Mhyrynde Noa, Dresher, Pennsylvania, Court of Federal Claims No: 20–1996V
231. Kathy Terry, Dresher, Pennsylvania, Court of Federal Claims No: 20–1998V

232. Lynda Wojan, Menifee, California, Court of Federal Claims No: 20–1999V
233. Zsuzsanna Kimball, Boston, Massachusetts, Court of Federal Claims No: 20–2000V
234. Sheralee Marshall, Boston, Massachusetts, Court of Federal Claims No: 20–2001V
235. Richard Lombardozzi, Boston, Massachusetts, Court of Federal Claims No: 20–2005V
236. Catherine Phipps, Boston, Massachusetts, Court of Federal Claims No: 20–2006V
237. Jodi McGraw, Boston, Massachusetts, Court of Federal Claims No: 20–2007V
238. Brian Phillip Crane, Boston, Massachusetts, Court of Federal Claims No: 20–2008V
239. Daniel Komarchuk, Boston, Massachusetts, Court of Federal Claims No: 20–2009V
240. Susan Clark-Granger, Boston, Massachusetts, Court of Federal Claims No: 20–2010V
241. Jerome Pittman, Sr. Union City, Georgia, Court of Federal Claims No: 20–2011V
242. Judith Gilmour, Boston, Massachusetts, Court of Federal Claims No: 20–2012V
243. Teresa L. Ritter, New Berlin, Wisconsin, Court of Federal Claims No: 20–2013V
244. Michael Graves, Boston, Massachusetts, Court of Federal Claims No: 20–2014V
245. William E. Wohlleben, New Berlin, Wisconsin, Court of Federal Claims No: 20–2015V
246. Jill Fudesco, Hartford, Connecticut, Court of Federal Claims No: 20–2017V
247. Joseph Soares, Palm Coast, Florida, Court of Federal Claims No: 20–2019V
248. Paul Enstrom, Greensboro, North Carolina, Court of Federal Claims No: 20–2020V
249. John M. Lewis, Boscobel, Wisconsin, Court of Federal Claims No: 20–2021V
250. Kristine E. Zadrazil, Sun Prairie, Wisconsin, Court of Federal Claims No: 20–2024V
251. Andrea Navis, Waukesha, Wisconsin, Court of Federal Claims No: 20–2025V
252. Michelle Shea, Summit, Wisconsin, Court of Federal Claims No: 20–2026V
253. Devin Hildebrand on behalf of T. H. Burlington, New Jersey, Court of Federal Claims No: 20–2027V
254. Katharine Towlen, Linwood, New Jersey, Court of Federal Claims No: 20–2028V
255. Maria Belen Banaag, Boston, Massachusetts, Court of Federal Claims No: 20–2029V
256. Marcus Bowen, Boston, Massachusetts, Court of Federal Claims No: 20–2030V
257. Jennifer Meyer, Boston, Massachusetts, Court of Federal Claims No: 20–2031V
258. Ilse Kershaw, Boston, Massachusetts, Court of Federal Claims No: 20–2032V
259. Thomas Gothers, Norristown, Pennsylvania, Court of Federal Claims No: 20–2033V
260. Jacqueline Archibald, Boston, Massachusetts, Court of Federal Claims No: 20–2034V
261. Bridget Hastings, Boston, Massachusetts, Court of Federal Claims No: 20–2035V
262. Dee Wharton, Boston, Massachusetts, Court of Federal Claims No: 20–2036V
263. Brenda Pickard, Boston, Massachusetts, Court of Federal Claims No: 20–2040V
264. Judith Hatt, Boston, Massachusetts, Court of Federal Claims No: 20–2041V
265. Shana McDade, Atlanta, Georgia, Court of Federal Claims No: 20–2045V
266. Margie S. Keeling, Jackson, Mississippi, Court of Federal Claims No: 20–2048V
267. Belkis Diaz, Lakeland, Florida, Court of Federal Claims No: 20–2049V
268. Leslie Andersen, Boston, Massachusetts, Court of Federal Claims No: 20–2050V
269. Monique Ginn, Newark, New Jersey, Court of Federal Claims No: 20–2052V
270. Jonathan Dilger, Baltimore, Maryland, Court of Federal Claims No: 20–2054V
271. Cheryl Fajge, Souderton, Pennsylvania, Court of Federal Claims No: 20–2055V
272. Tiffany Curry on behalf of J. B. Hopewell, Virginia, Court of Federal Claims No: 20–2057V
273. Margaret Eddings, Coeur D'Alene, Idaho, Court of Federal Claims No: 20–2058V
274. Megan Hebbard-Contreras, Dresher, Pennsylvania, Court of Federal Claims No: 20–2059V
275. Francisco Marcillo, Sarasota, Florida, Court of Federal Claims No: 20–2061V
276. Keysha Ellis, Plano, Texas, Court of Federal Claims No: 20–2063V
277. Mariah Chatman, Manning, South Carolina, Court of Federal Claims No: 20–2064V
278. Brandon Winkler, Beverly Hills, California, Court of Federal Claims No: 20–2065V
279. George Heidrich, Madison, Wisconsin, Court of Federal Claims No: 20–2066V
280. Pierrette Jacobs, Phoenix, Arizona, Court of Federal Claims No: 20–2067V
281. Pamela Colby, Beverly Hills, California, Court of Federal Claims No: 20–2068V
282. Lori Roulette, Beverly Hills, California, Court of Federal Claims No: 20–2069V
283. Timothy Sisneros, Beverly Hills, California, Court of Federal Claims No: 20–2070V
284. Jeannine Woods, Beverly Hills, California, Court of Federal Claims No: 20–2071V
285. Milford Stingfellow, Beverly Hills, California, Court of Federal Claims No: 20–2072V
286. Susan Poynton, Beverly Hills, California, Court of Federal Claims No: 20–2073V
287. Harriet Papastamatakis, New York, New York, Court of Federal Claims No: 20–2074V
288. May Tom, Beverly Hills, California, Court of Federal Claims No: 20–2075V
289. Angelynn Ellenbecker, Beverly Hills, California, Court of Federal Claims No: 20–2076V
290. Luz Roa, Beverly Hills, California, Court of Federal Claims No: 20–2077V
291. Sabrina Eve Valentine, Beverly Hills, California, Court of Federal Claims No: 20–2078V
292. Nurcys Grimes, Tustin, California, Court of Federal Claims No: 20–2082V

[FR Doc. 2021–01331 Filed 1–21–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Information Technology Advisory Committee 2021 Schedule of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), HHS.

ACTION: Notice of meetings.

SUMMARY: The Health Information Technology Advisory Committee (HITAC) was established in accordance with the 21st Century Cures Act and the Federal Advisory Committee Act. The HITAC, among other things, identifies priorities for standards adoption and makes recommendations to the National

Coordinator for Health Information Technology (National Coordinator). The HITAC will hold public meetings throughout 2021. See list of public meetings below.

FOR FURTHER INFORMATION CONTACT: Lauren Richie, Designated Federal Officer, at *Lauren.Richie@hhs.gov,* (202) 205–7674.

SUPPLEMENTARY INFORMATION: Section 4003(e) of the 21st Century Cures Act (Pub. L. 114–255) establishes the Health Information Technology Advisory Committee (referred to as the ''HITAC''). The HITAC will be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

Composition

The HITAC is comprised of at least 25 members, of which:

- No fewer than 2 members are advocates for patients or consumers of health information technology;
- 3 members are appointed by the HHS Secretary;
  - 1 of whom shall be appointed to represent the Department of Health and Human Services; and
  - 1 of whom shall be a public health official;
- 2 members are appointed by the majority leader of the Senate;
- 2 members are appointed by the minority leader of the Senate;
- 2 members are appointed by the Speaker of the House of Representatives;
- 2 members are appointed by the minority leader of the House of Representatives; and
- Other members are appointed by the Comptroller General of the United States.

Members will serve for one-, two-, or three-year terms. All members may be reappointed for a subsequent three-year term. Each member is limited to two three-year terms, not to exceed six years of service. Members serve without pay, but will be provided per-diem and travel costs for committee services, if warranted.

Recommendations

The HITAC recommendations to the National Coordinator are publicly available at *https://www.healthit.gov/topic/federal-advisory-committees/recommendations-national-coordinator-health-it.*

Public Meetings

The schedule of meetings to be held in 2021 is as follows:

- January 13, 2021 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- February 10, 2021 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- March 10, 2021 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- April 15, 2021 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- May 13, 2021 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- June 9, 2021 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- July 14, 2021 from approximately 9:30 a.m. to 2:30 p.m./Easter Time (virtual meeting)
- September 9, 2021 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)
- November 10, 2021 from approximately 9:30 a.m. to 2:30 p.m./Eastern Time (virtual meeting)

All meetings are open to the public. Additional meetings may be scheduled as needed. For web conference instructions and the most up-to-date information, please visit the HITAC calendar on the ONC website, *https://www.healthit.gov/topic/federal-advisory-committees/hitac-calendar.*

Contact Person for Meetings: Lauren Richie, *Lauren.Richie@hhs.gov.* A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Please email Lauren Richie for the most current information about meetings.

Agenda: As outlined in the 21st Century Cures Act, the HITAC will develop and submit recommendations to the National Coordinator on the topics of interoperability, privacy and security, and patient access. In addition, the committee will also address any administrative matters and hear periodic reports from ONC. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its website prior to the meeting, the material will be made publicly available on ONC's website after the meeting, at *http://www.healthit.gov/hitac.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person prior to the meeting date. An oral public comment period will be scheduled at each meeting. Time allotted for each commenter will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting.

Persons attending in-person HITAC meetings are advised that the agency is not responsible for providing wireless access or access to electrical outlets.

ONC welcomes the attendance of the public at its HITAC meetings. Seating is limited at in-person meetings, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lauren Richie at least seven (7) days in advance of the meeting.

Notice of these meetings are given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: December 11, 2020.

Lauren Richie,

Designated Federal Officer, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2021–01411 Filed 1–21–21; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before February 22, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting

comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: HHS Teletracking COVID–19 Portal (U.S. Healthcare COVID–19 Portal).

Type of Collection: In use without an OMB number: OMB No. 0990–XXXX OS/OCIO.

Abstract: The data collected through this ICR informs the Federal Government's understanding of disease patterns and furthers the development of policies for prevention and control of disease spread and impact related to the 2019 Novel Coronavirus (COVID–19). One of the most important uses of the data collected through this ICR is to determine critical allocations of limited supplies (*e.g.,* protective equipment and medication). For instance, this collection has been used to distribute Remdesivir, a vital therapeutic that HHS distributes to the American healthcare system, via distinct data calls on regular intervals. As of July 10, HHS reduced the number requests for data from hospitals to support allocations of Remdesivir. HHS has stopped sending out one-time requests for data to aid in the distribution of Remdesivir or any other treatments or supplies. This consolidated daily reporting is the only mechanism used for the distribution calculations, and daily reports are needed to ensure accurate calculations.

Type of respondent: We acknowledge the burden placed on many hospitals, including resource constraints, and have allowed for some flexibilities, such as back-submissions or submitting every business days, with the understanding that respondents may not have sufficient staff working over the weekend. It is our belief that collection of this information daily is the most effective way to detect outbreaks and needs for Federal assistance over time, by hospital and geographical area, and to alert the appropriate officials for action. It's requested that 5,500 hospitals, submit data daily on the number of patients tested for COVID–19, as well as information on bed capacity and requirements for other supplies.

The HHS Teletracking COVID–19 Portal (U.S. Healthcare COVID–19 Portal) includes some data that were initially submitted by hospitals to HHS through CDC's National Healthcare Safety Network (NHSN) COVID–19 Module (OMB Control No. 0920–1290, approved 03/26/2020). Over the last several months time, the guidance for which data elements should be sent to HHS and through which method was updated at the request of the White House Coronavirus Task Force and other leaders to better inform the response.

ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Hospitals	HHS Teletracking COVID–19 Portal (U.S. Healthcare COVID–19 Portal).	5,500	365	1.5	3,011,250
Total					3,011,250

Dated: January 14, 2021.

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–01323 Filed 1–21–21; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: March 5, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20817 (Video-Assisted Meeting).

Contact Person: Luis E. Dettin, Ph.D., M.S., M.A., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (301) 827–8231, *luis_dettin@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: January 14, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01262 Filed 1–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of Institutional Training Grant Applications.

Date: March 2, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 664, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 664, Bethesda, MD 20892, 301–402–8559, *jimok.kim@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 14, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01264 Filed 1–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: February 11–12, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Benjamin Greenberg Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402–4786, *shaperobg@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Adult Psychopathology and Disorders of Aging.

Date: February 12, 2021.

Time: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hemostasis, Thrombosis, Blood Cells and Transfusion.

Date: February 16, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology B Study Section.

Date: February 18–19, 2021.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Gianina Ramona Dumitrescu, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4193–C, Bethesda, MD 28092, 301–827–0696, *dumitrescurg@csr.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300–6541, *boulaymg@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical Integrative Cardiovascular and Hematological Sciences Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: February 18–19, 2021.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mohammad Samiul Alam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809D, Bethesda, MD 20892, (301) 435–1199, *alammos@csr.nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Developmental Therapeutics Study Section.

Date: February 18–19, 2021.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: February 18–19, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov*.

Name of Committee: Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: February 18–19, 2021.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *mulkya@mail.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Biology and Development of the Eye Study Section.

Date: February 18–19, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Learning, Memory and Decision Neuroscience Study Section.

Date: February 18–19, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Roger Janz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *janzr2@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: February 18–19, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01263 Filed 1–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: February 16–17, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jenny R Browning, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 5207, Bethesda, MD 20892, (301) 402–8197, *jenny.browning@nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Inese Z Beitins, MD. Scientific Review Officer. Center for Scientific Review. National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7892. Bethesda, MD 20892. 301–435–1034. *beitinsi@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.

Date: February 18, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: February 22–23, 2021.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: February 22–23, 2021.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review,

National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1256, *biesj@mail.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Integrative Vascular Physiology and Pathology Study Section.

Date: February 22–23, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, MS, Ph.D., Scientific Review Officer, Vascular and Hematology IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

Date: February 22–23, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David R Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Promotion in Communities Study Section.

Date: February 22–23, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Helena Eryam Dagadu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, 301–435–1266, *dagaduhe@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Virology—B Study Section.

Date: February 22–23, 2021.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1742, *kaushikbasun@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: February 22, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael L Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01261 Filed 1–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review E–SEP.

Date: February 10–12, 2021.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John P. Holden, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, (301) 496–8775, *john.holden@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: January 14, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01266 Filed 1–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Post-Acute Interventions for the Treatment of Anorexia Nervosa (R34).

Date: February 16, 2021.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive BLVD, Room 6000, MSC 9606, Bethesda, MD 20852, 301–500–5829, *serena.chu@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Research on the Ethical Implications of Advancements in Neurotechnology and Brain Science (R01).

Date: February 18, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience, Center, 6001 Executive Blvd., Room 6149, MSC 9608,

Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: January 14, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01269 Filed 1–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–13: Chemopreventive Agent Delivery.

Date: March 4, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240–276–6371, *decluej@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; IMAT Biospecimen Science.

Date: March 17, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Rockville, Maryland 20850, 240–276–6371, *decluej@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–3: Research Answers to NCI Provocative Questions.

Date: March 19, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W634, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Michael E. Lindquist, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W634, Rockville, MD 20850, 240–276–5735, *mike.lindquist@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–4: Research Answers to NCI Provocative Questions.

Date: March 30, 2021.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850, 240–276–6457, *mh101v@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01260 Filed 1–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: February 11, 2021.

Time: 4:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Benjamin G. Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, Bethesda, MD 20892, (301) 402–4786, *shaperobg@mail.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

Date: February 18–19, 2021.

Time: 8:00 a.m. to 7:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary G. Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, *marygs@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Kidney and Urological Systems Function and Dysfunction Study Section.

Date: February 18–19, 2021.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ganesan Ramesh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182 MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Immunology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pauline Cupit, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institute of Health, 6701 Rockledge, Drive Bethesda, MD 20892, (301) 435–0000, *cupitcunninghpm@mail.nih.gov*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian H. Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Science of Implementation in Health and Healthcare Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480–8667, *wangw22@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Nutrition and Metabolism in Health and Disease Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, 301–755–4335, *greg.shelness@nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Lifestyle Change and Behavioral Health Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ahlishia Jnae Shipley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3222, MSC 7816, Bethesda, MD 20892, (301) 480–8976, *shipleyaj@mail.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

Date: February 18–19, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *eleni.liapi@nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Mechanisms of Cancer Therapeutics—1 Study Section.

Date: February 18–19, 2021.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–905–8294, *rahman-sesay@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: February 18–19, 2021.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Learning, Memory and Decision Neuroscience.

Date: February 18, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kondratyevad@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

Date: February 18–19, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15 NIH Research Enhancement Award (AREA and REAP) Review.

Date: February 18, 2021.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 14, 2021.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–01268 Filed 1–21–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 21–03]

Western Hemisphere Travel Initiative: Designation of an Approved Native American Tribal Card Issued by the Muscogee (Creek) Nation as an Acceptable Document To Denote Identity and Citizenship for Entry in the United States at Land and Sea Ports of Entry

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection is designating an approved Native American tribal card issued by the Muscogee (Creek) Nation to U.S. and Canadian citizen tribal members as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Muscogee (Creek) Nation members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

DATES: This designation will become effective on January 22, 2021.

FOR FURTHER INFORMATION CONTACT: Adele Fasano, Executive Director, Planning, Program Analysis, and Evaluation, Office of Field Operations, U.S. Customs and Border Protection, via email at *Adele.Fasano@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI Land and Sea Final Rule). The rule amended various sections in the Code of Federal Regulations (CFR), including 8 CFR 212.0, 212.1, and 235.1. The WHTI Land and Sea Final Rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI Land and Sea Final Rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands [1] is a Native American tribal card that has been designated as an acceptable document to denote identity and citizenship by the Secretary of Homeland Security, pursuant to section 7209 of IRTPA. Specifically, 8 CFR 235.1(e), as amended by the WHTI Land and Sea Final Rule, provides that upon designation by the Secretary of Homeland Security, of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. It provides that the Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. It further provides that a list of the documents designated under this section will also be made available to the public.

A United States qualifying tribal entity is defined as a tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards. *See* 8 CFR 212.1.[2] Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents U.S. citizens may use to establish identity and citizenship when entering the United States. *See* 8 CFR 235.1(b)(7).

The Secretary has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain United States Native American tribal cards. *See* DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

Tribal Card Program

The WHTI Land and Sea Final Rule allows U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal identification cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP has been working with various U.S. federally recognized Native American tribes to facilitate the development of such cards.[3] As part of the process, CBP will enter into one or more agreements with a U.S. federally recognized tribe that specify the requirements for developing and issuing WHTI-compliant Native American tribal cards, including a testing and auditing process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of Homeland Security or the Commissioner of CBP may designate the Native American tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. More information about WHTI-compliant documents is available at *www.cbp.gov/travel.*

The Pascua Yaqui Tribe of Arizona became the first Native American tribe to have its Native American tribal card designated as a WHTI-compliant document by the Commissioner of CBP. This designation was announced in a notice published in the **Federal Register** on June 9, 2011 (76 FR 33776). Subsequently, the Commissioner of CBP announced the designation of several other Native American tribal cards as WHTI- compliant documents. *See, e.g.,* the Puyallup Tribe of Indians, 84 FR

[1] ''Adjacent islands'' is defined in 8 CFR 212.0 as ''Bermuda and the islands located in the Caribbean Sea, except Cuba.'' This definition applies to 8 CFR 212.1 and 235.1.

[2] This definition applies to 8 CFR 212.1 and 235.1.

[3] The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as ''Enhanced Tribal Cards'' or ''ETCs.''

67278 (December 9, 2019); the Swinomish Indian Tribal Community, 84 FR 70984 (December 26, 2019); and the Confederated Tribes of the Colville Reservation, 85 FR 31796 (May 27, 2020).

Muscogee (Creek) Nation WHTI-Compliant Native American Tribal Card Program

The Muscogee (Creek) Nation has voluntarily established a program to develop a WHTI-compliant Native American tribal card that denotes identity and U.S. or Canadian citizenship. On March 28, 2016, CBP and the Muscogee (Creek) Nation entered into a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate tribal cards to be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Muscogee (Creek) Nation who can establish identity, tribal membership, and U.S. or Canadian citizenship. The cards incorporate physical security features acceptable to CBP as well as facilitative technology allowing for electronic validation by CBP of identity, citizenship, and tribal membership.[4]

CBP has tested the cards developed by the Muscogee (Creek) Nation pursuant to the above MOA and related agreements, and has performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the Native American tribal cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands.[5] CBP's continued acceptance of the Native American tribal cards as a WHTI-compliant document is conditional on compliance with the MOA and related agreements.

Acceptance and use of the WHTI-compliant Native American tribal cards is voluntary for tribe members. If an individual is denied a WHTI-compliant Native American tribal card, he or she may still apply for a passport or other WHTI-compliant document.

Designation

This notice announces that the Commissioner of CBP designates the Native American tribal card issued by the Muscogee (Creek) Nation in accordance with the MOA and all related agreements between the tribe and CBP as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. or Canadian citizenship of Muscogee (Creek) Nation members for the purposes of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

The Senior Official Performing the Duties of the Commissioner Mark A. Morgan, having designated the Native American tribal card issued by the Muscogee (Creek) Nation as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e), and having reviewed and approved this notice, is delegating the authority to electronically sign this notice to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Dated: January 15, 2021.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2021–01401 Filed 1–19–21; 8:45 am]

BILLING CODE 9111–14–P

[4] CBP and the Muscogee (Creek) Nation entered into a Service Level Agreement (SLA) on April 27, 2017, concerning technical requirements and support for the production, issuance, and verification of the Native American tribal cards. CBP and the Muscogee (Creek) Nation also entered into an Interconnection Security Agreement in November 2016, with respect to individual and organizational security responsibilities for the protection and handling of unclassified information.

[5] The Native American tribal card issued by the Muscogee (Creek) Nation may not, by itself, be used by Canadian citizen tribal members to establish that they meet the requirements of section 289 of the Immigration and Nationality Act (INA) [8 U.S.C. 1359]. INA § 289 provides that nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race. While the tribal card may be used to establish a card holder's identity for purposes of INA § 289, it cannot, by itself, serve as evidence of the card holder's Canadian birth or that he or she possesses at least 50% American Indian blood, as required by INA § 289.

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031328; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Museum of Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Riverside, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Museum of Riverside. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Museum of Riverside at the address in this notice by February 22, 2021.

ADDRESSES: Robyn G. Peterson, Museum Director, Ph.D., Museum of Riverside, 3580 Mission Inn Avenue, Riverside, CA 92501, telephone (951) 826–5792, email *rpeterson@riversideca.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Museum of Riverside, Riverside, CA, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In 1925, 20 Hupa sacred items affiliated with the Hoopa Valley Tribe were donated to the Museum of Riverside as part of the institution's founding. In 1951 and 1952, three additional Hupa sacred objects were donated by two separate individuals. None of the donors provided the Museum with information pertaining to the objects' provenience. According to the donor records, the provenance of 14 (or 61%) of the Museum's Hupa sacred objects was the Brizard Collection. This collection is known to the Hoopa Valley Tribe. The 23 objects include: One string bag, four dance aprons, two dance baskets, two dentalium strings, one

dress, four hair ornaments, one headband, four headdresses, one necklace, one pipe, and two purses.

The Museum has determined the identity and cultural affiliation of the 23 objects in consultation with Hoopa Valley Tribe representatives Cutcha Risling Baldy (member), Keduescha Lara-Colegrove (Tribal Historic Preservation Officer), Byron Nelson, Jr. (Chairman), and Sillischitawn S. Jackson (Curator, Hoopa Tribal Museum).

Determinations Made by the Museum of Riverside

Officials of the Museum of Riverside have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 23 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Hoopa Valley Tribe, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Robyn G. Peterson, Ph.D., Museum Director, Museum of Riverside, 3580 Mission Inn Avenue, Riverside, CA 92501, telephone (951) 826–5792, email *rpeterson@riversideca.gov,* by February 22, 2021. After that date, if no additional claimants have come forward, transfer of ownership of the sacred objects to the Hoopa Valley Tribe, California may proceed.

The Museum of Riverside is responsible for notifying the Hoopa Valley Tribe, California that this notice has been published.

Dated: December 23, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–01338 Filed 1–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–31362; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before January 9, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by February 8, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on ''property or proposed district name, (County) State.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 9, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ARIZONA

Pima County

Broadmoor Historic District, Residential subdivision south of Broadway Blvd. between Tucson Blvd. and Country Club Rd., Tucson, SG100006151

ARKANSAS

Washington County

Rieff's Chapel Cemetery, West Pear Ln., Fayetteville, SG100006153

IOWA

Polk County

Elmwood, The- The Oaks-The Birches, 2315 Grand Ave., Des Moines, SG100006155

KENTUCKY

Jefferson County

Hertel Pharmacy, 2565–2567 Bank St., Louisville, SG100006154

OHIO

Ashland County

Arthur Street School, 416 Arthur St., Ashland, SG100006147

Cuyahoga County

Midtown Historic District, Perkins (south side), Chester, Euclid, Prospect, and Carnegie (north side) Aves., roughly between I–90, East 27th, East 40th and East 55th Sts., Cleveland, SG100006160

Fulton County

Fulton Lodge No. 248, 401 ½ Main St., Delta, SG100006149

Union County

Partridge, Reuben L. House 245 West 7th St., Marysville, SG100006161

Van Wert County

Convoy Opera House-City Hall-Firehouse Building, 111 South Main St., Convoy, SG100006162

Wood County

Risingsun Town Hall and Opera House, 420 Main St., Risingsun, SG100006150

PENNSYLVANIA

Perry County

Clark's Ferry Tavern, 603 North Market St., Duncannon, SG100006148

PUERTO RICO

Arecibo Municipality

Franklin Delano Roosevelt Graded School, (Puerto Rico Reconstruction Administration MPS), Calle Oriente No. 218, Arecibo vicinity, MP100006152

VIRGINIA

Botetourt County

Glencoe, 1088 Poor Farm Rd., Fincastle vicinity, SG100006157

Hanover County

Macmurdo House, 713 South Center St., Ashland, SG100006158

Lynchburg Independent City

DeWitt-Wharton Manufacturing Company, 1701 12th St., Lynchburg, SG100006156

Prince William County

Mount Pleasant Baptist Church and Cemetery, 15008 Lee Hwy., Gainesville, SG100006159

Authority: Section 60.13 of 36 CFR part 60.

Dated: January 12, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2021–01336 Filed 1–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031329; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Mississippi Department of Archives and History, Jackson, MS; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Mississippi Department of Archives and History (MDAH) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Mississippi Department of Archives and History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Mississippi Department of Archives and History at the address in this notice by February 22, 2021.

ADDRESSES: Meg Cook, Director of Archaeology Collections, Mississippi Department of Archives and History, Museum Division, 222 North Street, P.O. Box 571, Jackson, MS 39205, telephone (601) 576–6927, email *mcook@mdah.ms.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Mississippi Department of Archives and History, Jackson, MS. The human remains and associated funerary objects were removed from the region of Mississippi north of the Yazoo and Yalobusha Rivers including DeSoto, Clay, Lafayette, Monroe, Panola, Pontotoc, Quitman, Tate, Tunica, Union, and Webster counties.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals previously reported in a Notice of Inventory Completion published in the **Federal Register** on April 13, 2018 (83 FR 16121–16123, April 13, 2018); additional human remains were discovered after publication and 207 individuals are hereby corrected to 403 individuals. This notice corrects the number of funerary objects reported in the prior notice from 50 associated funerary objects to 83 lots of funerary objects. Additional information received during ongoing consultations successfully affiliated all listed individuals previously identified as culturally unidentifiable. The notice published in 2018 included the following counties: Clay, DeSoto, Panola, and Tunica; this notice contains additional counties not previously reported including: Lafayette, Monroe, Pontotoc, Quitman, Tate, Union, and Webster. Transfer of control of the items in this correction notice has not occurred.

Consultation

A detailed assessment of human remains was made by the Mississippi Department of Archives and History professional staff in consultation with representatives of the Alabama-Coushatta Tribe of Texas (previously listed as Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Miami Tribe of Oklahoma; Mississippi Band of Choctaw Indians; Quapaw Nation (previously listed as The Quapaw Tribe of Indians); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and The Osage Nation (previously listed as Osage Tribe) (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Prior to 1965, human remains representing, at minimum, two individuals were removed from an unspecified location in Northeast Mississippi. The individuals came into MDAH's possession in 1964 by way of donation from R. DeMar Whitfield. No known individuals were identified. The one associated funerary object is one lot of ceramic sherds.

MDAH has determined that these human remains are Native American through circumstances of acquisition and observation of biological markers consistent with this ancestry. Circumstances of acquisition show that these human remains are affiliated with the pre-contact Woodland cultures that are indigenous to this region of Mississippi. Present day Indian Tribes associated with pre-contact Woodland cultures include, but are not limited to, The Tribes.

Up to 1991, human remains and associated funerary objects were removed from the following counties in Mississippi: Clay, Desoto, Lafayette, Monroe, Panola, Pontotoc, Quitman, Tate, Tunica, Union, and Webster. The following information regarding these individuals is organized by county.

In June 1990, human remains representing, at minimum, two individuals were removed from the Brogan Village (22CL501b) site in Clay County, MS. No known individuals were identified. The three associated funerary objects are one lot of ceramic sherds, one lot of lithics, and one lot of soil matrix.

Beginning in 1962, human remains representing, at minimum, 76 individuals were removed from the following sites in DeSoto County, MS: Cheatham (22DS514), Dogwood Ridge (22DS511), Edgefield Mounds (22DS509), Harris (22DS504), Irby (22DS516), Lake Cormorant (22DS501), McKay's Store (22DS506), Migva (22DS526), Shannon #2 (22DS519), Walls (22DS500), Walls/Harris (22DS500/504), Woodlyn (22DS517) sites, and an unknown site. No known individuals were identified. The three associated funerary objects, removed from the Edgefield Mounds site, are one lot of ceramic sherds, one lot of ceramic vessels, and one lot of soil matrix.

At an unknown time prior to 1965, human remains representing, at minimum, one individual were removed from an unknown location in Lafayette County, MS. No known individual was

identified. No associated funerary objects are present.

At an undetermined time, human remains representing, at minimum, two individuals were removed from the Turner (22MO923) site in Monroe County, MS. No known individuals were identified. No associated funerary objects are present.

In the late 1960s, human remains representing, at minimum, 11 individuals were removed from McCarter Mounds (22PA502) and Dugger Bluff (22PA587) sites in Panola County, MS. No known individuals were identified. The eight associated funerary objects are: One lot of ceramic sherds, one lot of charcoal, one lot of copper pan pipes, one lot of faunal bone remains, one lot of lithics, two lots of soil matrix, and one lot of shell fragments.

At an undetermined date before 1962, human remains representing, at minimum, one individual were removed from an unknown location in Pontotoc County, MS. No known individual was identified. No associated funerary objects are present.

Beginning in the 1960s, human remains representing, at minimum, 87 individuals were removed from Shady Grove (22QU525) and Tom Harris Mounds (22QU574) sites in Quitman County, MS. No known individuals were identified. The 12 associated funerary objects include: One lot of bone awls, one lot of botanical remains, one lot of ceramic sherds, one lot of ceramic vessels, one lot charcoal, one lot faunal bone remains, one lot of pit fill, one lot of limonite, one lot of lithics, one lot of shell, one lot of soil matrix, and one lot of vessel contents.

At an undetermined time, human remains representing, at minimum, one individual were removed from an unknown location in Tate County, MS. No known individual was identified. No associated funerary objects are present.

Beginning in 1966, human remains representing, at minimum, 216 individuals were removed from the following sites in Tunica County: Austin (22TU549), Bonds Village (22TU530), Boyd (22TU531), Dundee Mounds (22TU501), Evansville (22TU502), Flowers #3 (22TU518), Hollywood Mounds (22TU500), Jepson (22TU522), Mhoon Landing (22TU514), and Norflett Mound (22TU519). No known individuals were identified. The 56 associated funerary objects are: One lot of bird talons, two lots of bone awl, one lot of bone needles, two lots of botanical material, one lot of celts, two lots of ceramic vessels, six lots of ceramic sherds, three lots of charcoal, one lot of clay beads, one lot of coprolites, two lot of daub, one lot ear plugs, five lots of faunal bone fragments, one lot flotation samples, one lot fired clay, one lot of hammerstones, one lot of historic glass, two lots of historic metal, four lots of lithics, one lot of lithic bifaces, two lots of modified faunal bone, one lot of otoliths, two lots of projectile points, two lots of shell, one lot of shell beads, one lot of shell gorgets, three lots of soil matrix, two lots of unmodified stone, two lots of water-screened pit fill, and one lot of wolf teeth.

In 1964, human remains representing, at minimum, three individuals were removed from the Ingomar Mounds (22UN500) site in Union County, MS. No known individuals were identified. No associated funerary objects are present.

In the 1930s, human remains representing, at minimum, one individual were removed from the G.H. Holland Mound (22WE502) site in Webster County, MS. No known individual was identified. No associated funerary objects are present.

The Mississippi Department of Archives and History has determined that the human remains of each of these individuals are Native American through the circumstances of acquisition, as well as through the observance of biological markers consistent with this ancestry. The circumstances of acquisition, including excavation notes and associated funerary objects, show that these human remains are affiliated with the multiple cultures that are indigenous to these areas of Mississippi. Individuals and associated funerary objects from the Archaic cultural period are represented in sites from DeSoto, Monroe, Panola, Tunica, and Quitman Counties. Individuals and associated funerary objects from the Woodland cultural period are represented in sites from Clay, Lafayette, Panola, Quitman, Tunica, and Webster Counties. Individuals and associated funerary objects from the Mississippian cultural period are represented in sites from DeSoto, Quitman, Tunica, and Union Counties. The unknown Pontotoc and Tate County sites are not associated with a specified period of occupation, but have been determined to be Native American in ancestry.

Present day Indian Tribes associated with these cultures include, but are not limited to The Tribes.

Determinations Made by the Mississippi Department of Archives and History

Officials of the Mississippi Department of Archives and History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 403 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 83 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Meg Cook, Director of Archaeology Collections, Mississippi Department of Archives and History, Museum Division, 222 North Street, P.O. Box 571, Jackson, MS 39205, telephone (601) 576–6927, email *mcook@mdah.ms.gov,* by February 22, 2021. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Mississippi Department of Archives and History is responsible for notifying The Tribes that this notice has been published.

Dated: January 5, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–01340 Filed 1–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031351; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Los Angeles County Museum of Art, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Los Angeles County Museum of Art (LACMA), in consultation with Indian Tribes or Native Hawaiian organizations listed in this notice, has determined that the cultural item listed in this notice meets the definition of sacred object and object of cultural patrimony. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Los Angeles County Museum of Art. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Los Angeles County Museum of Art at the address in this notice by February 22, 2021.

ADDRESSES: Jeffrey N. Blair, General Counsel and Assistant Secretary, Los Angeles County Museum of Art, 5905 Wilshire Boulevard, Los Angeles, CA 90036, telephone (323) 857–6048, email *jblair@lacma.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Los Angeles County Museum of Art, Los Angeles, CA, that meets the definition of sacred object and object of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

At an unknown date, one cultural item, a heraldic house screen, identified as Tlingit in the Los Angeles County Museum of Art's records, was removed from the Tlingit Thunderbird Clan House. This item was loaned to the Alaska State Museum by a Thunderbird House representative, where it was displayed between 1971–1987. Upon the lender's passing, his spouse consigned the screen to auction at Sotheby's New York in 1991, whereupon it was separated from the Central Council of the Tlingit & Haida Indian Tribes. In 1995, the item was sold at a Sotheby's auction to a private collector. In April 2017, funds were given to LACMA to purchase this cultural item from a private collector. The item was accessioned by LACMA on August 8, 2017.

Based on consultation with the Central Council of the Tlingit & Haida Indian Tribes, and archival research at the University of Washington and the Alaska State Museum, the Los Angeles County Museum of Art has determined that this house screen is an integral part of rituals and ceremonies performed by Tlingit traditional religious leaders of the Thunderbird Clan. The cultural item was identified by the auction house, academic experts in the study of Tlingit culture, and traditional Tlingit cultural leaders as belonging to the Central Council of the Tlingit & Haida Indian Tribes.

Determinations Made by the Los Angeles County Museum of Art

The Los Angeles County Museum of Art has determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and object of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Additional Requesters and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Jeffrey N. Blair, General Counsel and Assistant Secretary, Los Angeles County Museum of Art, 5905 Wilshire Boulevard, Los Angeles, CA 90036, telephone (323) 857–6048, email *jblair@lacma.org,* by February 22, 2021. After that date, if no additional claimants have come forward, transfer of control of the sacred object and object of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes may proceed.

The Los Angeles County Museum of Art is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: January 6, 2021.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–01337 Filed 1–21–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0031299; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Pu'ukoholā Heiau National Historic Site, Kamuela, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Pu'ukoholā Heiau National Historic Site has completed an inventory of associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to Pu'ukoholā Heiau National Historic Site. If no additional requestors come forward, transfer of control of the associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Pu'ukoholā Heiau National Historic Site at the address in this notice by February 22, 2021.

ADDRESSES: Daniel K. Kawaiaea, Jr., Superintendent, Pu'ukoholā Heiau National Historic Site, 62–3601

Kawaihae Road, Kamuela, HI 96743, telephone (808) 882–7218, email *daniel_kawaiaea@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Pu'ukoholā Heiau National Historic Site, Kawaihae, HI. The associated funerary objects were removed from Kawaihae, Hawaii County, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Pu'ukoholā Heiau National Historic Site.

Consultation

A detailed assessment of the associated funerary objects was made by Pu'ukoholā Heiau National Historic Site professional staff in consultation with representatives of the Office of Hawaiian Affairs; Robertson Ohana; Queen Emma Land Company; and the Waimea Hawaiian Civic Club. The Akau Ohana; Hawaii Island Burial Council; Hawaii State Historic Preservation Division; Kahaialii Ohana; Kalahiki Ohana; Laau Ohana; Na Aikane o Pu'ukohola Heiau; Na Papa Kanaka o Pu'ukohola Heiau; Napaepae-Kunewa Ohana; and the Soo Ohana were invited to consult but did not participate (hereafter referred to as ''The Consulted and Invited Native Hawaiian Organizations'').

History and Description of the Remains

In 1978, 35 cultural items were removed from the John Young Homestead in Hawaii County, HI, during archeological investigations at the upper portion of the site. The items were recovered from a burial crypt within Structure 2. No human remains were removed. The items were identified as parts of a coffin made exclusively for burial purposes or to contain human remains. They were accessioned and cataloged into the park's museum collection on May 8, 1986. The 35 associated funerary objects are four square cut nails and 31 coffin fragments.

The upper portion of John Young Homestead is a post-contact period site with a use period dating from 1798 to at least 1835, the time of John Young's death. The burials were those of a juvenile and infant, with the infant placed in a wood coffin. Because of John Young's marriage to several Native Hawaiian women, and children of Native Hawaiian descent, these items are considered to have a Native Hawaiian affiliation.

Determinations Made by Pu'ukoholā Heiau National Historic Site

Officials of Pu'ukoholā Heiau National Historic Site have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the 35 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are reasonably believed to have been made exclusively for burial purposes or to contain human remains.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the associated funerary objects and the Akau Ohana; Hawaii Island Burial Council; Kahaialii Ohana; Kalahiki Ohana; Laau Ohana; Na Aikane o Pu'ukohola Heiau; Na Papa Kanaka o Pu'ukohola Heiau; Napaepae-Kunewa Ohana; Office of Hawaiian Affairs; Queen Emma Land Company; Robertson Ohana; Soo Ohana; and the Waimea Hawaiian Civic Club (hereafter referred to as ''The Native Hawaiian Organizations).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Daniel K. Kawaiaea, Jr., Superintendent, Pu'ukoholā Heiau National Historic Site, 62–3601 Kawaihae Road, Kamuela, HI 96743, telephone (808) 882–7218, email *daniel_kawaiaea@nps.gov,* by February 22, 2021. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Native Hawaiian Organizations may proceed.

The Pu'ukoholā Heiau National Historic Site is responsible for notifying The Consulted and Invited Native Hawaiian Organizations that this notice has been published.

Dated: December 15, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2021–01339 Filed 1–21–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 731–TA–1472 (Final)]

Difluoromethane (R-32) From China; Cancellation of Hearing for Final Phase Anti-Dumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: *Effective Date:* January 12, 2021.

FOR FURTHER INFORMATION CONTACT: Ahdia Bavari ((202) 205–3191), 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 (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective August 27, 2020, the Commission published its schedule for the final phase of this investigation (85 FR 55688, September 9, 2020), further revised effective October 19, 2020 (85 FR 68566, October 23, 2020). Counsel for Arkema filed its request to appear at the hearing on January 8, 2021. No other parties submitted a request to appear at the hearing. On January 12, 2021, counsel withdrew their request to appear at the hearing. Counsel indicated a willingness to submit written responses to any Commission questions in lieu of an actual hearing. Consequently, the public hearing in connection with this investigation, scheduled to begin at 9:30 a.m. on January 14, 2021, is cancelled. Parties to this investigation should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on January 21, 2021.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 14, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–01271 Filed 1–21–21; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Appellate Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Appellate Rules, Revised notice of open meeting.

SUMMARY: The Advisory Committee on Appellate Rules will hold a virtual meeting on April 7, 2021. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone or video conference to observe but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.* The announcement for this meeting was previously published in 86 FR 3196.

DATES: April 7, 2021, 10 a.m.–5 p.m. (Eastern).

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

Authority: 28 U.S.C. 2073.

Dated: January 14, 2021.

Rebecca A. Womeldorf,

Rules Committee Secretary, Rules Committee Staff.

[FR Doc. 2021–01382 Filed 1–21–21; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Bankruptcy Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Bankruptcy Rules, Revised notice of open meeting.

SUMMARY: The Advisory Committee on Bankruptcy Rules will hold a virtual meeting on April 8, 2021 and April 9, 2021. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone or video conference to observe but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.* The announcement for this meeting was previously published in 86 FR 3195.

DATES: April 8–9, 2021, 10 a.m.–5 p.m. (Eastern).

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

Authority: 28 U.S.C. 2073.

Dated: January 14, 2021.

Rebecca A. Womeldorf,

Rules Committee Secretary, Rules Committee Staff.

[FR Doc. 2021–01383 Filed 1–21–21; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Criminal Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Criminal Rules, Revised notice of open meeting.

SUMMARY: The Advisory Committee on Criminal Rules will hold a virtual meeting on May 11, 2021. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone or video conference to observe but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.* The announcement for this meeting was previously published in 86 FR 3195.

DATES: May 11, 2021, 10 a.m.–5 p.m. (Eastern).

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

Authority: 28 U.S.C. 2073.

Dated: January 14, 2021.

Rebecca A. Womeldorf,

Rules Committee Secretary, Rules Committee Staff.

[FR Doc. 2021–01384 Filed 1–21–21; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Civil Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Civil Rules, Notice of open meeting.

SUMMARY: The Advisory Committee on Civil Rules will hold a virtual meeting on April 23, 2021. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone or video conference to observe but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: April 23, 2021, 10 a.m.—5 p.m. (Eastern).

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

Authority: 28 U.S.C. 2073.

Dated: January 14, 2021.

Rebecca A. Womeldorf,

Rules Committee Secretary, Rules Committee Staff.

[FR Doc. 2021–01380 Filed 1–21–21; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Evidence Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Evidence Rules, Revised notice of open meeting.

SUMMARY: The Advisory Committee on Evidence Rules will hold a virtual meeting on April 30, 2021. The meeting is open to the public. When a meeting is held virtually, members of the public may join by telephone or video conference to observe but not participate. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *http://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.* The announcement for this meeting was previously published in 86 FR 3196.

DATES: April 30, 2021, 10 a.m.–5 p.m. (Eastern).

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

Authority: 28 U.S.C. 2073.

Dated: January 14, 2021.

Rebecca A. Womeldorf,

Rules Committee Secretary, Rules Committee Staff.

[FR Doc. 2021–01385 Filed 1–21–21; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Tax Performance System (TPS).'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 23, 2021.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Stephanie Garcia by telephone at 202–693–3207 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *garcia.stephanie@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Washington, DC 20210; by email: *garcia.stephanie@dol.gov;* or by fax 202–696–3975.

FOR FURTHER INFORMATION CONTACT: Stephanie Garcia by telephone at 202–693–3207 (this is not a toll-free number) or by email at *garcia.stephanie@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Since 1987, the regulation at 20 CFR part 602 requires states to operate a program to assess their Unemployment Insurance (UI) tax and benefit programs. TPS is designed to assess the major internal UI tax functions by utilizing several methodologies to examine the accuracy of the ETA 581, Contribution Operations Report, OMB approval number 1205–0178, expiring August 31, 2021, and its associated Computed Measures. A two-fold examination contains ''Systems Reviews'' that examine tax systems for the existence of internal controls and the extraction of small samples of those systems' transactions, which are then examined to verify the effectiveness of controls.

Section 303(a)(1) and (6) of the Social Security Act authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control 1205–0332.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Tax Performance System.

Form: ET Handbook Number 407.

OMB Control Number: 1205–0332.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 52.

Frequency: Once.

Total Estimated Annual Responses: 52.

Estimated Average Time per Response: 1,716 hours.

Estimated Total Annual Burden Hours: 89,232 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2021–01265 Filed 1–21–21; 8:45 am]

BILLING CODE 4510–FW–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Designation of Databases for Treasury's Working System Under the Do Not Pay Initiative

AGENCY: Office of Management and Budget.

ACTION: Notice of proposed designation.

SUMMARY: The Payment Integrity Information Act of 2019 (PIIA) authorizes the Office of Management and Budget (OMB) to designate databases for inclusion in Treasury's Working System under the Do Not Pay (DNP) Initiative. PIIA further requires OMB to provide public notice and opportunity for comment prior to designating additional databases. As a result, OMB is publishing this Notice of Proposed Designation to designate the United States Postal Service (USPS) Delivery Sequence File, the Census Bureau Federal Audit Clearinghouse, the Do Not Pay (DNP) Agency Adjudication Data, Fiscal Service's Payments, Claims, and Enhanced Reconciliation (PACER) database, Bureau of Prisons (BOP) Incarceration Data, Digital Accountability and Transparency Act (DATA Act) data, Census Bureau's American Communities Survey (ACS) Annual State and County Data Profiles, Veterans Affairs' (VA) Beneficiary Identification Records Locator Service (BIRLS), Department of Agriculture's National Disqualified List (NDL), Center for Medicare and Medicaid Services (CMS) National Plan and Provider Enumeration System (NPPES), Internal Revenue Service's (IRS) Statistics of Income (SOI) Annual Individual Income Tax ZIP Code Data, and the U.S. Securities and Exchange Commission's (SEC) Electronic Data Gathering, Analysis, and Retrieval (EDGAR) System. OMB's detailed analysis of the aforementioned databases has been posted on *Regulations.gov*. This notice has a 30-day comment period.

DATES: Please submit comments on or before February 22, 2021. At the conclusion of the 30-day comment period, if OMB decides to finalize the designation, OMB will publish an additional notice in the **Federal Register** to officially designate the databases.

Please note that all public comments received are subject to the Freedom of Information Act and will be posted in their entirety, including any personal and/or business confidential information provided. Do not include any information you would not like to be made publicly available.

ADDRESSES: Comments may be sent by mail. The Office of Management and Budget, Attn: OFFM, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Regina Kearney at (202) 395–3993.

SUPPLEMENTARY INFORMATION: PIIA, Public Law 116–117, 134 Stat. 113 (Mar. 2, 2020) (codified at 31 U.S.C. 3351–3358), authorizes the OMB to designate databases for inclusion in Treasury's Working System under the DNP Initiative. 31 U.S.C. 3354(b)(1)(B). PIIA further requires OMB to provide public notice and opportunity for comment prior to designating additional databases. *Id.* at § 3354(b)(2)(B). For additional analysis and information pertaining to aforementioned databases, please refer to *Regulations.gov*.

We invite public comments on the proposed designation of each of the twelve databases identified in this notice.

Russell T. Vought,

Director.

[FR Doc. 2021–01327 Filed 1–21–21; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Rescission Proposals Pursuant to the Congressional Budget and Impoundment Control Act of 1974

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of rescissions.

SUMMARY: Pursuant to section 1014(d) of the Congressional Budget and Impoundment Control Act of 1974, enclosed for publication in the **Federal Register** is a special message from the President reflecting the proposals for rescission under section 1012 of that Act that were transmitted to the Congress for consideration on January 14, 2021.

DATES: The Congress was notified on January 14, 2021.

ADDRESSES: The rescissions proposal package is available on-line on the OMB home page at: *https://www.whitehouse.gov/omb/budget-rescissions-deferrals/*.

Russell T. Vought,

Director.

Dear Madam Speaker: (Dear Mr. President:)

In accordance with section 1012(a) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 683(a)), I herewith report 73 rescissions of budget authority, totaling $27.4 billion.

The proposed rescissions affect programs of the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, the Interior, Justice, Labor, State, and the Treasury, as well as the African Development Foundation, the Commission of Fine Arts, the Corporation for National and Community Service, the District of Columbia, the Environmental Protection Agency, the Inter-American Foundation, the Millennium Challenge Corporation, the National Endowments for the Arts and Humanities, the National Gallery of Art, the Peace Corps, the Presidio Trust, the United States Agency for International Development, the United States Army Corps of Engineers, and the Woodrow Wilson International Center for Scholars.

The details of these rescissions are set forth in the enclosed letter from the Director of the Office of Management and Budget.

Sincerely,

Donald J. Trump

January 14, 2021

The President
The White House

Dear Mr. President:

Submitted for your consideration is a special message that includes rescission proposals for the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, the Interior, Justice, Labor, State, and the Treasury, as well as the African Development Foundation, the Commission of Fine Arts, the Corporation for National and Community Service, the District of Columbia, the Environmental Protection Agency, the Inter-American Foundation, the Millennium Challenge Corporation, the National Endowments for the Arts and Humanities, the National Gallery of Art, the Peace Corps, the Presidio Trust, the United States Agency for International Development (USAID), the United States Army Corps of Engineers, and the Woodrow Wilson International Center for Scholars.

The Administration is proposing these rescissions of enacted appropriations in accordance with section 1012(a) of the Congressional Budget and Impoundment

Control Act of 1974 (ICA) (2 U.S.C. 683(a)). As you requested in your statement on December 27, this special message identifies wasteful and unnecessary spending that must be removed from the Consolidated Appropriations Act, 2021, as well as other amounts that are no longer needed for the purposes for which they were appropriated.

This special message emphasizes the need to cut wasteful foreign aid spending at the Department of State and USAID and other international affairs agencies, while also proposing targeted cuts to programs across the Federal Government where the funding provided by the bill seems particularly egregious, especially in the context of the economic hardship that was caused by the pandemic.

This special message proposes to rescind $27.4 billion in budget authority, the largest ICA rescission package ever proposed. If enacted, these rescissions would decrease Federal outlays in the affected accounts by an estimated $24.9 billion; this would have a commensurate effect on the Federal budget deficit and the national economy, and would result in less borrowing by the Federal Government.

In addition to the items included in the attached special message, there are numerous provisions in the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), that are not subject to rescission under the ICA but nonetheless contribute to the Nation's unsustainable fiscal path. These include, for example, extensions of energy tax credits including the Investment Tax Credit and Production Tax Credit. Even during the pandemic, industries supported by these tax credits have continued to grow, and they have achieved full maturity, no longer needing costly Federal support. We look forward to working with the Congress to identify additional opportunities to reduce unnecessary Federal subsidies and put the Nation's fiscal house back in order.

Recommendation

I recommend you transmit a special message that includes these rescission proposals to the Congress.

Sincerely,

Russell T. Vought
Director

Enclosures

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 683)

Rescission proposal no. R21–1

Agency: DEPARTMENT OF AGRICULTURE
Bureau: Rural Business-Cooperative Service
Account: Rural Energy for America Program (012-1908/X)

Amount proposed for rescission: $10,000,000

Justification:

This proposal would rescind $10 million, the full amount appropriated in FY 2021 for a new renewable energy pilot program. This assistance would be duplicative of existing loan guarantee and grant programs at the Department of Agriculture, Rural Development. Furthermore, the Budget proposes to eliminate these programs because they are wasteful and provided over a billion dollars over 10 years to successful businesses that qualify for private sector capital. Government funding is appropriation for early-stage research, not deployment of commercially available technologies. Enacting the rescission would eliminate the program.

Rescission proposal no. R21–2

Agency: DEPARTMENT OF AGRICULTURE
Bureau: Foreign Agricultural Service
Account: Food for Peace Title II Grants (012-2278/X)

Amount proposed for rescission: $1,528,699,234

Justification:

This proposal would rescind $1.5 billion of the $1.7 billion appropriated in FY 2021 for Food for Peace Title II Grants. While Title II is one component of U.S. emergency overseas food aid, it is inefficient and inflexible compared to emergency food aid provided through the International Disaster Assistance account. These funds far exceed the FY 2021 Budget request level for humanitarian assistance, which combined with other available resources average nearly $9 billion annually—funding sufficient to allow the second highest annual U.S. humanitarian assistance programming ever in calendar years 2020 and 2021. Enacting the rescission would eliminate the portion of Title II funding that remains unobligated and encourage greater contributions from other nations and provide savings to the U.S. taxpayer while retaining America's position as the largest single donor.

Rescission proposal no. R21–3

Agency: DEPARTMENT OF AGRICULTURE
Bureau: Foreign Agricultural Service
Account: McGovern-Dole International Food for Education and Child Nutrition Program Grants (012-2903/X)

Amount proposed for rescission: $230,000,000

Justification:

This proposal would rescind $230 million, the full amount appropriated in FY 2021 for McGovern-Dole International Food Program. This program provides for the donation of U.S. agricultural commodities and associated financial and technical assistance in foreign countries, a service which is duplicative to that of the U.S. Agency for International Development. The program has high costs associated with transporting commodities and it has unaddressed oversight and performance monitoring challenges. During the 17-year operation of McGovern-Dole, auditors have found oversight weaknesses as reported by the Government Accountability Office (GAO), independent consultants, and the Department of Agriculture's Office of Inspector General. GAO has found weakness in performance monitoring, program evaluations, and prompt closeout of agreements. GAO has also found inefficiencies with in-kind food aid, such as McGovern-Dole, resulting in higher costs. Enacting the rescission would eliminate the program.

Rescission proposal no. R21–4

Agency: DEPARTMENT OF COMMERCE
Bureau: National Oceanic and Atmospheric Administration
Account: Operations, Research, and Facilities (013-1450 2021/2022)

Amount proposed for rescission: $181,097,000

Justification:

This proposal would rescind $181 million of the $285 million appropriated in FY 2021 for the National Oceanic and Atmospheric Administration's (NOAA) Climate Research programs, a new water resource cooperative institute, and Sea Grant. NOAA's climate research programs fund a wide range of intramural and extramural activities and tools for decision making. The direction to establish a new, unrequested cooperative institute causes serious concerns, as NOAA already addresses many of these issues within existing programs. Those underlying programs themselves deserve review, as in the past they have supported activities such as local tourism efforts and rain garden education, both of which are more appropriately funded at the local level. A new institute also creates long term funding obligations that will negatively impact NOAA's ability to focus on higher priority activities. Enacting the rescission would eliminate funding for NOAA's Climate Competitive Research program and Sea Grant in excess of what is needed to achieve Administration objectives and eliminate the direction to establish a new, costly, unrequested cooperative institute.

Rescission proposal no. R21–5

Agency: DEPARTMENT OF COMMERCE
Bureau: National Oceanic and Atmospheric Administration
Account: Pacific Coastal Salmon Recovery (013-1451 2021/2022)

Amount proposed for rescission: $64,500,000

Justification:

This proposal would rescind $64.5 million of the $65 million appropriated in FY 2021 for the Pacific Coastal Salmon Recovery Fund (PCSRF). PSCRF provides competitive grants to states and tribes for salmon restoration projects. These funds would be used for projects such as habitat improvements and dam removal, unnecessarily augmenting existing state and tribal efforts and favoring a region and certain species. Enacting the rescission would eliminate the program.

Rescission proposal no. R21–6

Agency: DEPARTMENT OF EDUCATION
Bureau: Office of Federal Student Aid
Account: Student Financial Assistance (091-0200 2021/2022)

Amount proposed for rescission: $880,000,000

Justification:

This proposal would rescind $880 million of the $24.5 billion appropriated in FY 2021 for the Student Financial Assistance account. The Federal Supplemental Educational Opportunity Grant (SEOG) program provides need-based grant aid to eligible undergraduate students to help reduce financial barriers to postsecondary education.

The SEOG program is not optimally allocated based on a student's financial need and is duplicative of other need-based financial aid programs, such as Pell Grants. Enacting the rescission would eliminate the program.

Rescission proposal no. R21–7

Agency: DEPARTMENT OF EDUCATION
Bureau: Office of Federal Student Aid
Account: Federal Direct Student Loan Program (091-0243/X)

Amount proposed for rescission: $50,000,000

Justification:

This proposal would rescind $50 million, the full amount appropriated in FY 2021 for Temporary Expanded Public Service Loan Forgiveness (TEPLSF). TEPSLF provides loan forgiveness for certain Federal student loan borrowers working in public service who do not qualify for Public Service Loan Forgiveness. The $50 million is not necessary because the Congress has previously allocated $750 million, which provides for up to $1.075 billion in loan forgiveness, for this purpose and most of that money has not yet been spent. Under this rescission, these public service employees would still have access to up to $1.075 billion in loan forgiveness through TEPSLF as well as income-driven repayment plans that are available to other borrowers. These repayment plans are generous in that they allow for affordable monthly payments and permit eventual loan forgiveness. Enacting the rescission would reduce the amount of loan forgiveness provided under TEPSLF, which the Congress has just increased to $1.15 billion, by up to $75 million, leaving up to $1.075 billion in loan forgiveness available.

Rescission proposal no. R21–8

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Science (089-0222/X)

Amount proposed for rescission: $1,186,500,000

Justification:

This proposal would rescind $1.2 billion of the $2.3 billion in emergency funding appropriated in FY 2021 for the Office of Science (SC). SC funds scientific research and major scientific facilities as a sponsor of basic research in the physical sciences and fundamental energy research. SC supports ten national laboratories, university research, scientific and medical isotope development and production, and workforce development programs. Funding designated as emergency would be used to support facility operations and modernization, which are not an emergency function. Enacting the rescission would focus resources on high priority activities within SC.

Rescission proposal no. R21–9

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Advanced Research Projects Agency—Energy (089-0337 2021/2022)

Amount proposed for rescission: $13,744,000

Justification:

This proposal would rescind $14 million of the $35 million appropriated in FY 2021 for Advanced Research Projects Agency—Energy (ARPA–E) program direction. ARPA–E funds high-risk energy research and development projects. ARPA–E was first funded in 2009 through the American Reinvestment and Recovery Act as a new, separate office within the Department of Energy (DOE), however, it makes little strategic sense that ARPA–E exists independent of DOE's main applied research programs, especially when the research they fund is similar. These funds would be used to administer FY 2021 research and development solicitations and awards. This rescission would reduce administrative resources commensurate with eliminating the program. Enacting the rescission would maintain sufficient administrative funding to conduct close out activities.

Rescission proposal no. R21–10

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Advanced Research Projects Agency—Energy (089-0337/X)

Amount proposed for rescission: $392,000,000

Justification:

This proposal would rescind $392 million, the full amount of no-year funding appropriated in FY 2021 for Advanced Research Project Agency—Energy (ARPA–E). ARPA–E funds high-risk energy research and development projects. ARPA–E was first funded in 2009 through the American Reinvestment and Recovery Act as a new, separate office within the Department of Energy (DOE), however, it makes little strategic sense that ARPA–E exists independent of DOE's main applied research programs, especially when the research they fund is similar. This elimination would enable a streamlining of Federal energy research and development activities, promotes a clearer focus on early-stage research and development, where the Federal role is strongest, and reflects the private sector's role in commercializing technologies. Enacting the rescission would eliminate the program.

Rescission proposal no. R21–11

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Energy Efficiency and Renewable Energy (089-0321 2021/2022)

Amount proposed for rescission: $42,437,000

Justification:

This proposal would rescind $42 million of the $165 million appropriated in FY 2021 for the Office of Energy Efficiency and Renewable Energy (EERE) program direction. EERE predominantly funds research, development, demonstration, and deployment (RDD&D) of transportation, renewable energy, and energy efficient technologies. These funds would be used for administrative expenses associated with RDD&D of energy technologies, which are activities that the private sector has a clear incentive to invest in. Enacting the rescission would rebalance the portfolio to more heavily favor early-stage research and development where the Federal role is strongest.

Rescission proposal no. R21–12

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Energy Efficiency and Renewable Energy (089-0321/X)

Amount proposed for rescission: $2,124,323,000

Justification:

This proposal would rescind $2.1 billion of the $2.9 billion appropriated in FY 2021 for the Office of Energy Efficiency and Renewable Energy (EERE). EERE predominantly funds research, development, demonstration, and deployment of transportation, renewable energy, and energy efficient technologies. These funds would be used for later stage development, demonstration, commercialization, and deployment of energy technologies which is more appropriate for the private sector to conduct. Enacting the rescission would rebalance the portfolio to more heavily favor early-stage research and development where the Federal role is strongest.

Rescission proposal no. R21–13

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Advanced Technology Vehicles Manufacturing Loan Program (089-0322 2021/2022)

Amount proposed for rescission: $5,000,000

Justification:

This proposal would rescind $5 million, the full amount appropriated in FY 2021 for the Advanced Technology Vehicle Manufacturing Loan Program (ATVM). ATVM provides direct loans to support the manufacturing of advanced technology vehicles and component parts. These funds would be used for administrative expenses associated with soliciting and originating new loans. The private sector is better positioned to finance the deployment of commercially viable advanced vehicle manufacturing projects. Sufficient carryover balances are available to monitor existing loans. Enacting this rescission would eliminate the program.

Rescission proposal no. R21–14

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Advanced Technology Vehicles Manufacturing Loan Program (089-0322/X)

Amount proposed for rescission: $2,425,499,814

Justification:

This proposal would rescind $2.4 billion, in addition to the $1.9 billion rescinded by the Consolidated Appropriations Act, 2021, of the funds appropriated in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 for the Advanced Technology Vehicle Manufacturing Loan Program (ATVM). ATVM provides direct loans to support the manufacturing of advanced technology vehicles and component parts. The private sector is better positioned to finance the deployment of commercially viable advanced vehicle manufacturing projects. Enacting this rescission would eliminate the program.

Rescission proposal no. R21–15

Agency: DEPARTMENT OF ENERGY

Bureau: Energy Programs
Account: Title 17 Innovative Technology Loan Guarantee Program (089-0208 2021/2022)

Amount proposed for rescission: $29,000,000

Justification:

This proposal would rescind $29 million of the $32 million appropriated in FY 2021 for the Title XVII Innovative Technology Loan Guarantee Program (T17). T17 provides loans and loan guarantees to support the deployment of innovative energy technologies. These funds would be used for administrative expenses associated with soliciting and originating new loans. The private sector is better positioned to finance the deployment of commercially viable energy projects. Sufficient carryover balances are available to monitor existing loans. Enacting this rescission would eliminate the program.

Rescission proposal no. R21–16

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Title 17 Innovative Technology Loan Guarantee Program (089-0208/X)

Amount proposed for rescission: $160,659,356

Justification:

This proposal would rescind $161 million appropriated in FY 2011 for the cost of guaranteeing loans under the Title XVII Innovative Technology Loan Guarantee Program (T17). T17 provides loans and loan guarantees to support the deployment of innovative energy technologies. These funds would be used for the cost of guaranteeing loans. The private sector is better positioned to finance the deployment of commercially viable energy projects. Enacting this rescission would eliminate the origination of new loans using appropriated credit subsidy.

Rescission proposal no. R21–17

Agency: DEPARTMENT OF ENERGY
Bureau: Energy Programs
Account: Title 17 Innovative Technology Loan Guarantee Program (089-0209/X)

Amount proposed for rescission: $96,855,477

Justification:

This proposal would rescind $97 million, in addition to the $392 million rescinded by the Consolidated Appropriations Act, 2021, of the funds appropriated in the American Recovery and Reinvestment Act of 2009 for the Temporary Program for Rapid Deployment of Renewable Energy and Electric Power Transmission Projects (section 1705). Section 1705 provided loan guarantees to support the deployment of renewable power, biofuels, and electric transmission projects, but authority to enter into new loan guarantees expired in September 2011. Enacting this rescission would eliminate the use of the remaining balances to pay for the cost of modifying existing loans and loan guarantees.

Rescission proposal no. R21–18

Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES
Bureau: Centers for Disease Control and Prevention
Account: CDC-Wide Activities and Program Support (075-0943 2021/2021)

Amount proposed for rescission: $12,300,000

Justification:

This proposal would rescind $12.3 million of the $12.5 million appropriated in FY 2021, the remaining unobligated balance, for Firearm Injury and Mortality Prevention Research. The explanatory statement recommends that the Centers for Disease Control and Prevention (CDC) conduct further research on injury and mortality prevention related to firearms. These funds would be used for continuing research cooperative agreements through the CDC, which is a low priority for public health funds when CDC should be focused on addressing pressing concerns related to the COVID–19 pandemic and infectious diseases. Enacting the rescission would eliminate funding for these activities.

Rescission proposal no. R21–19

Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES
Bureau: National Institutes of Health
Account: Office of the Director (075-0846 2021/2021)

Amount proposed for rescission: $12,500,000

Justification:

This proposal would rescind $13 million, the amount specified in FY 2021 to continue research grants on firearm injury and mortality prevention. The explanatory statement recommends that the National Institutes of Health take a comprehensive approach to studying underlying causes and evidence-based methods of prevention of injury, including crime prevention. These funds would primarily be used to continue grants funded in FY 2020, which are low priority due to on-going COVID–19 pandemic response efforts and other types of biomedical research. Enacting the rescission would discontinue new firearm injury and mortality prevention grants awarded in FY 2021 and prior years.

Rescission proposal no. R21–20

Agency: DEPARTMENT OF HOMELAND SECURITY
Bureau: Office of the Secretary and Executive Management
Account: Operations and Support (070-0100 2021/2021)

Amount proposed for rescission: $13,750,000

Justification:

This proposal would rescind $14 million, the estimated remaining amount of one-year funding appropriated in FY 2021 for the Office of the Ombudsman for Immigration Detention. The Office is tasked with reviewing immigration detention standards, which is unnecessary and duplicative of monitoring and inspections by other Department of Homeland Security offices, including Immigration and Customs Enforcement and the Office of Inspector General. There is no need to add layers of bureaucracy when the work is already being done–especially at such a high cost to taxpayers. Enacting the rescission would eliminate the program and streamline the Department's efforts.

Rescission proposal no. R21–21

Agency: DEPARTMENT OF HOMELAND SECURITY
Bureau: Office of the Secretary and Executive Management
Account: Operations and Support (070-0100 2021/2022)

Amount proposed for rescission: $5,000,000

Justification:

This proposal would rescind $5 million, the full amount of two-year funding appropriated in FY 2021 for the Office of the Ombudsman for Immigration Detention. The Office is tasked with reviewing immigration detention standards, which is unnecessary and duplicative of monitoring and inspections by other Department of Homeland Security offices, including Immigration and Customs Enforcement and the Office of Inspector General. There is no need to add layers of bureaucracy when the work is already being done–especially at a high cost to taxpayers. Enacting the rescission would eliminate the program and streamline the Department's efforts.

Rescission proposal no. R21–22

Agency: DEPARTMENT OF HOMELAND SECURITY
Bureau: Office of the Secretary and Executive Management
Account: Federal Assistance (070-0416 2021/2022)

Amount proposed for rescission: $5,000,000

Justification:

This proposal would rescind $5 million, the full amount of funding appropriated in FY 2021 to the Alternatives to Detention (ATD) Case Management pilot program in the Office of the Secretary and Executive Management within the Department of Homeland Security. The $5 million proposed for rescission were to be transferred to the Federal Emergency Management Agency who would provide grants to nonprofit and local governments to create a pilot program for aliens enrolled in ATD. There is no need to develop a case management program when one already exists at Immigration and Customs Enforcement (ICE). This is yet another example of wasteful spending that does nothing to protect Americans. This money would be better spent on tangible security efforts, such as the border wall or increased ICE detention space. Enacting this rescission would eliminate this duplicative pilot program.

Rescission proposal no. R21–23

Agency: DEPARTMENT OF THE INTERIOR
Bureau: National Park Service
Account: National Recreation and Preservation (014-1042 2021/2022)

Amount proposed for rescission: $23,000,000

Justification:

This proposal would rescind $23 million of the $24 million appropriated in FY 2021 for the Heritage Partnership Program. The Heritage Partnership Program provides funding to National Heritage Areas, which are not part of the National Park System. The lands within heritage areas tend to remain in State, local, or private ownership. These grants to State and local entities are not a

Federal responsibility and consequently do not need Federal dollars. Enacting the rescission would eliminate the program, and provide minimal resources to close-out and transition the program to the State, local, or private entities that manage the areas.

Rescission proposal no. R21–24

Agency: DEPARTMENT OF JUSTICE
Bureau: Office of Justice Programs
Account: State and Local Law Enforcement Assistance (015-0404/X)

Amount proposed for rescission: $244,000,000

Justification:

The proposal would rescind $244 million, the full amount appropriated in FY 2021 for the State Criminal Alien Assistance Program (SCAAP). SCAAP, which reimburses State, local, and tribal governments for prior year costs associated with incarcerating certain illegal criminal aliens, is unauthorized and poorly targeted. This program represents a general revenue transfer to States that neither focuses resources on immigration enforcement nor fully reimburses their detention costs. In 2018, the reimbursement rate was about 24 cents on the dollar, with just four States—California, Florida, New York, and Texas—receiving over two-thirds of available funds. Enacting the rescission would eliminate the program for FY 2021.

Rescission proposal no. R21–25

Agency: DEPARTMENT OF LABOR
Bureau: Employment and Training Administration
Account: Training and Employment Services (016-0174 2021/2022)

Amount proposed for rescission: $93,896,000

Justification:

The proposal would rescind $94 million, the full amount appropriated in FY 2021 for the Migrant and Seasonal Farmworker Training program (MSFW). The program is duplicative in that it creates a parallel training system for migrant and seasonal farmworkers, who are eligible to receive services through the core Workforce Innovation and Opportunity Act formula programs. Two programs providing the same services to the same population is duplicative and unnecessary. Enacting the rescission would eliminate MSFW, the smaller of the two duplicative programs serving the population.

Rescission proposal no. R21–26

Agency: DEPARTMENT OF LABOR
Bureau: Occupational Safety and Health Administration
Account: Salaries and Expenses (016-0400 2021/2021)

Amount proposed for rescission: $11,787,000

Justification:

This proposal would rescind $12 million, a portion of the $592 million appropriated in FY 2021 for the Occupational Training and Health Administration (OSHA). Through the Susan Harwood Training Grants program, OSHA provides competitive grants to non-profit organizations to develop and conduct occupational safety and health training programs and presentations. This is an unnecessary and an ineffective practice, and OSHA has no evidence that the program leads to improvements in workplace safety and health. Enacting the rescission would eliminate new grants.

Rescission proposal no. R21–27

Agency: DEPARTMENT OF LABOR
Bureau: Departmental Management
Account: Salaries and Expenses (016-0165 2021/2022)

Amount proposed for rescission: $60,000,000

Justification:

This proposal would rescind $60 million, a portion of the funding appropriated in FY 2021 for the Bureau of International Labor Affairs (ILAB). ILAB provides grants to promote worker protection oversees. ILAB's grants do not represent a core Government function, and many of its grants are awarded noncompetitively. Enacting the rescission would eliminate funding for ILAB's grants in FY 2021, but would not impact the funding provided in the United States-Mexico-Canada Agreement Implementation Act for grants to promote worker protection in Mexico.

Rescission proposal no. R21–28

Agency: DEPARTMENT OF STATE
Bureau: Administration of Foreign Affairs
Account: Educational and Cultural Exchange Programs (019-0209/X)

Amount proposed for rescission: $430,000,000

Justification:

This proposal would rescind $430 million of the $740 million appropriated in FY 2021 for Educational and Cultural Exchanges (ECE). Through ECE, the Department of State currently manages over 75 active academic, professional, and cultural exchange programs. People to people exchange programs no longer need the enacted level of funding given that over 1 million students typically study in the United States annually without any Department of State support. Wasteful examples of exchange programs include $3 million for various youth Tech Camps and $4 million for an exchange program with wealthy Germany. Enacting the rescission would direct the Department of State to reduce the number of exchange programs to a core few, which would allow the Department to focus its resources on those programs that have demonstrated results and support strategic foreign policy objectives that benefit Americans.

Rescission proposal no. R21–29

Agency: DEPARTMENT OF STATE
Bureau: International Organizations and Conferences
Account: Contributions to International Organizations (019-1126 2021/2021)

Amount proposed for rescission: $540,000,000

Justification:

This proposal would rescind $540 million of the $1.5 billion in funding appropriated in FY 2021 for the Contributions to International Organizations (CIO) account. The CIO account funds assessments to the United Nations (UN) and other international organizations to which the United States belongs. These funds would pay U.S. assessments to organizations and programs whose results are unclear, do not directly affect U.S. national security interests, or act against the interests of the American people. Enacting the rescission would provide partial payments to some organizations to clearly demonstrate the expectation that they achieve savings for the United States from greater accountability, efficiencies, and work to have equitable cost-sharing among other members.

Rescission proposal no. R21–30

Agency: DEPARTMENT OF STATE
Bureau: International Organizations and Conferences
Account: Contributions for International Peacekeeping Activities (019-1124 2021/2021)

Amount proposed for rescission: $377,000,000

Justification:

This proposal would rescind $377 million of the $1.5 billion in funding appropriated in FY 2021 for the Contributions to International Peacekeeping Activities (CIPA) account. The CIPA account provides funds for the United States' contributions toward the expenses associated with United Nations (UN) peacekeeping operations for which costs are distributed among UN members based on a scale of assessments. These funds constitute U.S. contributions to UN peacekeeping activities in excess of the FY 2021 Budget request level. Their rescission will reinforce the need for UN constraints on peacekeeping costs, elimination of missions as conditions warrant, and achievement of greater operational and management efficiencies. Enacting the rescission would not terminate any peacekeeping missions, but would defer a third of the U.S. payments to next year, and reinforce the expectation that the UN should increase accountability, reduce costs, and develop a fairer system of burden sharing that requires greater contributions from other nations.

Rescission proposal no. R21–31

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: Global Health Programs (019-1031 2021/2022)

Amount proposed for rescission: $5,106,000,000

Justification:

This proposal would rescind $5.1 billion of the $7.3 billion appropriated in FY 2021 for Global Health Programs, which includes $1.1 billion in base funding and $4 billion in funding designated as an emergency requirement. The Global Health Programs account funds activities related to child and maternal health, HIV/AIDS, and infectious diseases. The $1.1 billion in base funding would fund programs in excess of the Administration's global health goals. The $4 billion in funding designated as an emergency requirement would provide U.S. funds to support international vaccination efforts well in advance of clearly stated U.S. policy to vaccinate at-risk populations within the United States before supporting international vaccination efforts. Enacting this rescission would maintain U.S. funding to meet America's burden-share target of 25

percent of all donor contributions and would increase the incentive for other donors to burden share.

Rescission proposal no. R21–32

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: Global Health Programs (019-1031 2021/2025)

Amount proposed for rescission: $2,092,000,000

Justification:

This proposal would rescind $2.1 billion of the $5.9 billion appropriated in FY 2021 to the Department of State's Global Health Programs account to fund the President's Emergency Plan for AIDS Relief (PEPFAR). PEPFAR is an initiative of the U.S. Government to address the global HIV/AIDS epidemic. For bilateral programs, the proposed rescinded funds are well in excess of the FY 2021 Budget request level of $3.8 billion, which, when combined with prior-year excess funding, would fully fund PEPFAR's efforts to maintain all patients currently on antiretroviral treatment and would help target countries achieve epidemic control. For the Global Fund contribution, the FY 2021 Budget request level of $658 million would keep the United States on track to meet the Administration's $3.3 billion pledge for the Global Fund's sixth replenishment by 2022. Enacting this rescission would not affect any funding needs for FY 2021.

Rescission proposal no. R21–33

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: Migration and Refugee Assistance (019-1143/X)

Amount proposed for rescission: $1,771,300,766

Justification:

This proposal would rescind $1.8 billion of the $3.4 billion appropriated in FY 2021 for the Migration and Refugee Assistance account. The account's primary purpose is to assist refugees and victims of conflict worldwide through contributions to international humanitarian organizations and to support the U.S. Government's program of refugee resettlement in the United States. These funds far exceed the FY 2021 Budget request level for humanitarian assistance, which combined with other available resources average nearly $9 billion annually—funding sufficient to allow the second highest annual U.S. humanitarian assistance programming ever in calendar years 2020 and 2021. Enacting the rescission would encourage greater contributions from other nations and provide savings to the U.S. taxpayer while retaining America's position as the largest single donor.

Rescission proposal no. R21–34

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: Complex Crises Fund (072-1015/X)

Amount proposed for rescission: $30,000,000

Justification:

This proposal would rescind $30 million, the full amount appropriated in FY 2021 for the Complex Crises Fund. The Complex Crises Fund supports programs to prevent or respond to emerging or unforeseen complex crises overseas. These funds would duplicate efforts for preventing or responding to crises overseas and, consequently, are unnecessary given the existing programs and funds available for complex crises from multiple other foreign assistance accounts. Enacting the rescission would eliminate new funding for this account.

Rescission proposal no. R21–35

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: International Narcotics Control and Law Enforcement (011-1022 2021/2022)

Amount proposed for rescission: $255,000,000

Justification:

This proposal would rescind $255 million in unrequested funds of the $1.4 billion appropriated in FY 2021 for International Narcotics Control and Law Enforcement (INCLE). The INCLE program funds programs to counter illicit trafficking in narcotics, people, wildlife, and other forms of transnational crime. These funds would be used for programs that are not needed to implement the Administration's National Security Strategy or other important policy objectives. In addition to eliminating unnecessary funding for a host of bilateral programs, a portion of the funding proposed for reduction is earmarked by the Congress for projects that would be considered special interest pet projects if funded domestically. Enacting the rescission would result in funding key programs with a nexus to U.S. national security, while reducing funding for political pet projects or programs without a clear nexus to U.S. national security.

Rescission proposal no. R21–36

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: Democracy Fund (019-1121 2021/2022)

Amount proposed for rescission: $290,700,000

Justification:

This proposal would rescind $291 million, the full amount appropriated in FY 2021 for the Democracy Fund. Democracy Fund-supported programs claim to monitor and promote human rights and democracy worldwide. These types of programs are funded through multiple other accounts. Enacting funds through this account unnecessarily restricts the Administration's ability to program foreign assistance funds in priority sectors beyond democracy and human rights, and when combined with other accounts, the funding level provided exceeds an appropriate foreign assistance level. Enacting this rescission would eliminate new funding for the Democracy Fund.

Rescission proposal no. R21–37

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: Payment to the Asia Foundation (019-0525/X)

Amount proposed for rescission: $16,617,000

Justification:

This proposal would rescind $17 million of the $20 million appropriated in FY 2021, the remaining unobligated balance, for The Asia Foundation (TAF). TAF is a non-profit international development organization with programs across the region. These funds would be used to supplement TAF's fundraising, which duplicates activities carried out by the U.S. Agency for International Development. It is highly unusual for private organizations to receive a direct appropriation with no direct leadership from the Executive Branch to provide oversight. The Administration continues to support ending dedicated funding for organizations that may effectively serve niche missions, but which are not critical to the conduct of U.S. foreign policy and which duplicate the efforts of other Federal programs or the non-profit and private sectors. Enacting the rescission would eliminate the dedicated appropriation to TAF.

Rescission proposal no. R21–38

Agency: DEPARTMENT OF STATE
Bureau: Other
Account: East-West Center (019-0202 2021/2021)

Amount proposed for rescission: $16,405,000

Justification:

This proposal would rescind $16 million of the $20 million appropriated in FY 2021, the remaining unobligated balance, for the East-West Center (EWC). EWC is a cultural and educational exchange center based in Hawaii. The EWC duplicates activities carried out by the Department of State's Educational and Cultural Affairs Bureau, and due to its non-profit status can compete for grant funding rather than receive a dedicated appropriation. Enacting the rescission would eliminate EWC's dedicated appropriation, and require the Center to compete for Federal grant funding to continue operations.

Rescission proposal no. R21–39

Agency: INTERNATIONAL ASSISTANCE PROGRAMS
Bureau: Millennium Challenge Corporation
Account: Millennium Challenge Corporation (524-2750/X)

Amount proposed for rescission: $112,000,000

Justification:

This proposal would rescind $112 million of the $912 million appropriated in FY 2021 for the Millennium Challenge Corporation (MCC). MCC provides development assistance to address binding constraints to economic growth in worthy countries. While MCC's programs are generally viewed as effective, MCC has had difficulty fully obligating available funding, resulting in excessive unobligated balances that currently exceed $3 billion. Enacting this rescission will have no programmatic effect as this excess funding would only add to the program's unobligated balances.

Rescission proposal no. R21–40

Agency: INTERNATIONAL ASSISTANCE PROGRAMS
Bureau: International Security Assistance

Account: Economic Support Fund (072-1037 2021/2022)

Amount proposed for rescission: $241,040,000

Justification:

This proposal would rescind $241 million of the $3.9 billion appropriated in FY 2021 for the Economic Support Fund (ESF). ESF is used to provide economic support for countries beyond what could be justified as development assistance in order to promote economic or political stability. These funds were specifically earmarked for the West Bank and Gaza, and Burma for democracy, education, and economic development programs in addition to $101 million that was earmarked for the Central America Regional Security Initiative. Enacting the rescission would eliminate this economic assistance at a time when such resources could be better used domestically.

Rescission proposal no. R21–41

Agency: INTERNATIONAL ASSISTANCE PROGRAMS

Bureau: International Security Assistance

Account: Foreign Military Financing Program (011-1082 2021/2021)

Amount proposed for rescission: $500,000,000

Justification:

This proposal would rescind $500 million of the $6.2 billion appropriated in FY 2021 for the Foreign Military Financing (FMF) program. The FMF program provides grant assistance to provide American-made military equipment and services to key partners and allies abroad. The FY 2021 appropriation for FMF can be significantly reduced consistent with the President's foreign policy priorities and the FY 2021 Budget request. Enacting this rescission would eliminate $500 million in new grants not requested in the FY 2021 Budget request, but maintain a $5.7 billion annual program, which includes fully funding America's Memorandum of Understanding commitments to Israel and Jordan, longstanding support for Egypt, and other Administration priorities such as countering Chinese and Russian influence.

Rescission proposal no. R21–42

Agency: INTERNATIONAL ASSISTANCE PROGRAMS

Bureau: International Security Assistance

Account: International Military Education and Training (011-1081 2021/2021)

Amount proposed for rescission: $3,000,000

Justification:

This proposal would rescind $3 million of the $113 million appropriated in FY 2021 for International Military Education and Training. These funds would be used for training and military education in excess of what was identified as necessary to meet national security objectives in the FY 2021 Budget request. Enacting the rescission would still provide the necessary funding for priority programs including new funding for countering Russian malign influence.

Rescission proposal no. R21–43

Agency: INTERNATIONAL ASSISTANCE PROGRAMS

Bureau: Multilateral Assistance

Account: Global Environment Facility (011-0066 2021/2022)

Amount proposed for rescission: $139,575,000

Justification:

This proposal would rescind $140 million, the full amount appropriated in FY 2021 for contributions to the Global Environment Facility (GEF). The GEF provides funding to developing countries to meet their commitments under international environmental agreements. The funds appropriated for the U.S. contribution to the GEF in FY 2019 and FY 2020 are sufficient to complete the U.S. pledge to the GEF without a U.S. contribution in FY 2021 or FY 2022, and therefore the funding appropriated in FY 2021 is unnecessary. Enacting the rescission would have no effect on the U.S Government's ability to meet its pledge to the GEF.

Rescission proposal no. R21–44

Agency: INTERNATIONAL ASSISTANCE PROGRAMS

Bureau: Multilateral Assistance

Account: Contribution to the International Fund for Agricultural Development (011-1039 2021/2022)

Amount proposed for rescission: $26,581,000

Justification:

This proposal would rescind $27 million of the $33 million appropriated in FY 2021, the remaining unobligated balance, for payment to the International Fund for Agricultural Development (IFAD). IFAD is a United Nations specialized agency that provides agricultural programs focused mainly on remote rural areas of poor countries. This funding is duplicative and wasteful, as the U.S. Government can better achieve its food security objectives through its bilateral foreign assistance programs. Enacting the rescission would remove U.S. monetary support for IFAD, but not affect achievement of U.S. food security objectives.

Rescission proposal no. R21–45

Agency: INTERNATIONAL ASSISTANCE PROGRAMS

Bureau: Multilateral Assistance

Account: International Organizations and Programs (019-1005 2021/2021)

Amount proposed for rescission: $387,500,000

Justification:

This proposal would rescind $388 million, the full amount appropriated in FY 2021 for the International Organizations and Programs account. This account provides voluntary contributions to various international organizations. These funds would be used for programs and contributions that are unnecessary or duplicative of other programs the United States already supports and that are not essential to U.S. economic growth or national security. These funds would be used for efforts that, in some cases, should be the responsibility of individual countries or overlap with support already provided under other programs. Enacting this rescission would eliminate this separate funding source and would still allow for key programs to be prioritized and funded from within other foreign assistance accounts including development and humanitarian assistance programs.

Rescission proposal no. R21–46

Agency: INTERNATIONAL ASSISTANCE PROGRAMS

Bureau: Multilateral Assistance

Account: Debt Restructuring (011-0091 2021/2023)

Amount proposed for rescission: $15,000,000

Justification:

This proposal would rescind $15 million, the full amount appropriated in FY 2021 for Tropical Forest and Coral Reef Conservation Act (TFCCA) program. The TFCCA programming can be characterized as a ''debt-for-nature'' swap, where the U.S. Government offers eligible developing countries options to relieve certain official debt owed in exchange for those countries engaging in their own tropical forest or coral reef conservation activities. These funds do not support a national security priority and in fact provide no clear benefit to the United States. If other countries place value in their tropical forest or coral reef ecosystems, they can act independently to provide conservation without requiring U.S. incentives that benefit them. Enacting the rescission would eliminate funding for a program not needed to achieve Administration objectives.

Rescission proposal no. R21–47

Agency: INTERNATIONAL ASSISTANCE PROGRAMS

Bureau: Agency for International Development

Account: Development Assistance (072-1021 2021/2022)

Amount proposed for rescission: $2,220,960,000

Justification:

This proposal would rescind $2.2 billion of the $3.5 billion appropriated in FY 2021 for Development Assistance (DA). DA funds are used by the U.S. Agency for International Development to help developing countries achieve self-sustaining growth. These funds have been appropriated in excess of amounts needed to implement the National Security Strategy and achieve core U.S. strategic objectives. Enacting the rescission would reduce excess U.S. Government spending in foreign countries on programs related to governance, education, and social services which have demonstrated no clear return on investment to U.S. taxpayers at a time when resources are needed for such programs domestically.

Rescission proposal no. R21–48

Agency: INTERNATIONAL ASSISTANCE PROGRAMS

Bureau: Agency for International Development

Account: Assistance for Europe, Eurasia and Central Asia (072-0306 2021/2022)

Amount proposed for rescission: $770,334,000

Justification:

This proposal would rescind $770 million, the full amount appropriated in FY 2021 for

the Assistance for Europe, Eurasia, and Central Asia (AEECA) account. The purpose of this account is to promote economic and political stability in European, Eurasian, and Central Asian countries. Priority funding needed to implement the National Security Strategy and achieve core U.S. strategic objectives in these countries will be provided through the Economic Support Fund account. Enacting the rescission would mean policy priorities in this region would be funded through the same account structure as from FY 2013 to FY 2015.

Rescission proposal no. R21–49

Agency: INTERNATIONAL ASSISTANCE PROGRAMS
Bureau: Peace Corps
Account: Peace Corps (011-0100 2021/2022)

Amount proposed for rescission: $9,000,000

Justification:

This proposal would rescind $9 million of the $411 million appropriated in FY 2021 for the Peace Corps. The Peace Corps seeks to promote world peace and understanding by sending volunteers to help meet the basic needs of the poorest people in less developed countries. The funds are in excess of funds needed by the Peace Corps to further their mission. Enacting the rescission would not affect achieving the programs' objectives given the difficulty in carrying out these programs during the pandemic.

Rescission proposal no. R21–50

Agency: INTERNATIONAL ASSISTANCE PROGRAMS
Bureau: Inter-American Foundation
Account: Inter-American Foundation (011-3100 2021/2022)

Amount proposed for rescission: $29,000,000

Justification:

This proposal would rescind $29 million of the $38 million appropriated in FY 2021 for the Inter-American Foundation (IAF). IAF provides small grants to grassroots civil society organizations in Latin America and the Caribbean to improve the quality of life for the poor, and strengthen participation, accountability, and democratic processes. These funds are duplicative of small grants made by the U.S. Agency for International Development despite a lack of evidence of the effectiveness of small grants for achieving development outcomes. Enacting the rescission would have minimal programmatic impact, while providing costs needed to close the organization.

Rescission proposal no. R21–51

Agency: INTERNATIONAL ASSISTANCE PROGRAMS
Bureau: African Development Foundation
Account: United States African Development Foundation (011-0700 2021/2022)

Amount proposed for rescission: $23,000,000

Justification:

This proposal would rescind $23 million of the $33 million appropriated in FY 2021 for the African Development Foundation (ADF). ADF provides small grants to small businesses, non-governmental organizations, and other grassroots groups in Africa to address social and economic needs of local communities. These funds are duplicative of small grants made by the U.S. Agency for International Development despite a lack of evidence of the effectiveness of small grants for achieving development outcomes. Enacting the rescission would have minimal programmatic impact, while providing costs needed to close the organization.

Rescission proposal no. R21–52

Agency: DEPARTMENT OF THE TREASURY
Bureau: Departmental Offices
Account: Community Development Financial Institutions Fund Program Account (020-1881 2021/2021)

Amount proposed for rescission: $15,000,000

Justification:

This proposal would rescind $15 million of the $29 million appropriated in FY 2021 for administrative expenses of the Community Development Financial Institutions Fund (CDFI Fund). The CDFI Fund administers discretionary grant and direct loan programs including the CDFI Program, the Bank Enterprise Program, the Native American CDFI Assistance Program, the Healthy Food Financing Initiative, the Small Dollar Loan Program, and the Economic Mobility Corps. The CDFI Industry has matured, and these institutions should have access to private capital needed to build capacity, extend credit, and provide financial services to the communities they serve. Enacting the rescission would eliminate administrative expenses for the CDFI Fund's discretionary grant and direct loan programs. The remaining funds would be used for administration of the Bond Guarantee Program, the New Markets Tax Credit Program, and other ongoing activity of the CDFI Fund including certification and compliance monitoring for all programs.

Rescission proposal no. R21–53

Agency: DEPARTMENT OF THE TREASURY
Bureau: Departmental Offices
Account: Community Development Financial Institutions Fund Program Account (020-1881 2021/2022)

Amount proposed for rescission: $241,000,000

Justification:

This proposal would rescind $241 million, the full amount appropriated in FY 2021 for the Community Development Financial Institutions Fund (CDFI Fund) program awards. The CDFI Fund administers discretionary grant and direct loan programs including the CDFI Program, the Bank Enterprise Program, the Native American CDFI Assistance Program, the Healthy Food Financing Initiative, the Small Dollar Loan Program, and the Economic Mobility Corps. The CDFI Industry has matured, and these institutions should have access to private capital needed to build capacity, extend credit, and provide financial services to the communities they serve. Enacting the rescission would eliminate funding for the CDFI Fund's five discretionary grant and direct loan programs.

Rescission proposal no. R21–54

Agency: CORPS OF ENGINEERS—CIVIL WORKS
Bureau: Corps of Engineers—Civil Works
Account: Water Infrastructure Finance and Innovation Program Account (096-3139 2021/2022)

Amount proposed for rescission: $2,200,000

Justification:

This proposal would rescind $2 million, the full amount appropriated in FY 2021 for the Army Corps Water Infrastructure Finance and Innovation program administrative expenses. The newly established program would expand the Army Corps, historically an engineering and construction agency, into project finance where it has no expertise providing Federal credit support for water resources projects. These funds would be used for the administrative costs of the program. The Army Corps should focus on building, not banking. Rescission of these funds (and the credit subsidy budget authority) would eliminate appropriated funding for the cost of issuing loans or loan guarantees and for associated administrative costs.

Rescission proposal no. R21–55

Agency: CORPS OF ENGINEERS—CIVIL WORKS
Bureau: Corps of Engineers—Civil Works
Account: Water Infrastructure Finance and Innovation Program Account (096-3139/X)

Amount proposed for rescission: $12,000,000

Justification:

This proposal would rescind $12 million, the full amount appropriated in FY 2021 for the Army Corps Water Infrastructure Finance and Innovation program credit subsidy. The newly established program would expand the Army Corps, historically an engineering and construction agency, into project finance where it has no expertise providing Federal credit support for water resources projects. These funds would be used for the subsidy costs of issuing loans and guarantees for water resources projects. The Army Corps should focus on building, not banking. Rescission of these funds (and the two-year budget authority for administrative expenses) would eliminate appropriated funding for the cost of issuing loans or loan guarantees and for associated administrative costs.

Rescission proposal no. R21–56

Agency: ENVIRONMENTAL PROTECTION AGENCY
Bureau: Environmental Protection Agency
Account: Science and Technology (068-0107 2021/2022)

Amount proposed for rescission: $212,266,000

Justification:

This proposal would rescind $212 million of the $475 million appropriated in FY 2021 in the Science and Technology account for the Environmental Protection Agency's (EPA) Office of Research and Development (ORD). ORD conducts research to support agency decision-making in protecting human health and the environment. The appropriated funds would be used for research activities that are not required to meet EPA's statutory obligations, including the issuance of grants for research and fellowships, which do not serve a central function of the Federal Government. Enacting the rescission would

eliminate unnecessary activities in order to re-focus the EPA on core environmental statutory requirements.

Rescission proposal no. R21–57

Agency: ENVIRONMENTAL PROTECTION AGENCY
Bureau: Environmental Protection Agency
Account: Environmental Programs and Management (068-0108 2021/2022)

Amount proposed for rescission: $7,928,358

Justification:

This proposal would rescind $8 million of the $9 million appropriated in FY 2021, the remaining unobligated balance, for the Environmental Protection Agency's (EPA) Environmental Education (EE) program. The EE program provides guidance and financial support for education and stewardship activities. The appropriated funds would be used for grants for local education and stewardship projects such as planting school gardens, establishing youth summer camps, and field trips to local streams, which should not be a funding responsibility of the Federal Government. Furthermore, these programs may inappropriately encourage political activism among its recipients. Enacting the rescission would eliminate the Environmental Education program.

Rescission proposal no. R21–58

Agency: ENVIRONMENTAL PROTECTION AGENCY
Bureau: Environmental Protection Agency
Account: Environmental Programs and Management (068-0108 2021/2022)

Amount proposed for rescission: $9,109,000

Justification:

This proposal would rescind $9 million of the $12 million appropriated in FY 2021 for the Environmental Protection Agency's (EPA) Environmental Justice (EJ) program. The excessive appropriated funds would be used for the EJ hotline and EJ trainings, which are not required to meet EPA's statutory obligations. For example, the EJ Small Grants Program has prompted community gardening, improving the appearance of vacant urban lots, documenting land-use history before urban development, and training residents to participate in public debates on environmental issues. Enacting the rescission would streamline the EJ program to provide targeted support to EJ communities where it can be most effective.

Rescission proposal no. R21–59

Agency: ENVIRONMENTAL PROTECTION AGENCY
Bureau: Environmental Protection Agency
Account: State and Tribal Assistance Grants (068-0103/X)

Amount proposed for rescission: $509,053,000

Justification:

This proposal would rescind $509 million of the $1.1 billion appropriated in FY 2021 for the Environmental Protection Agency's (EPA) Categorical Grants. These programs fund grants, including associated program support costs, for States, federally recognized Tribes, interstate agencies, tribal consortia, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement, and related activities. These funds represent Federal investment in State environmental activities that go beyond EPA's statutory requirements. Enacting the rescission would prevent overreach and align Federal funding with the requirements laid out in environmental statutes.

Rescission proposal no. R21–60

Agency: ENVIRONMENTAL PROTECTION AGENCY
Bureau: Environmental Protection Agency
Account: State and Tribal Assistance Grants (068-0103/X)

Amount proposed for rescission: $80,000,000

Justification:

This proposal would rescind $80 million of the $90 million appropriated in FY 2021 for the Diesel Emissions Reductions Act (DERA) program. The program funds grants, loans, and rebates to retrofit, rebuild, or replace older diesel engines in order to reduce harmful diesel emissions. The appropriated amount is unnecessary given that: 1) previous appropriations have significantly increased funding for the DERA program (*e.g.,* a 45 percent increase from FY 2017 to FY 2020); 2) pollution emissions from the legacy fleet will be reduced over time without additional DERA funding as portions of the fleet turn over and are replaced with new engines that meet modern emissions standards; and 3) the 2016 settlement with Volkswagen made $2.7 billion available for similar projects. Enacting the rescission would reduce funding to $10 million for the program.

Rescission proposal no. R21–61

Agency: COMMISSION OF FINE ARTS
Bureau: Commission of Fine Arts
Account: National Capital Arts and Cultural Affairs (323-2602 2021/2021)

Amount proposed for rescission: $5,000,000

Justification:

This proposal would rescind $5 million, the full amount appropriated in FY 2021 for the National Capital Arts and Cultural Affairs grant program. The National Capital Arts and Cultural Affairs grant program provides general operating support to larger artistic and cultural institutions operating in the District of Columbia. The Federal Government should not be using taxpayer dollars to subsidize local performing arts organizations including within the District of Columbia, especially when live performances have been essentially shut down by the Mayor of the District of Columbia. Enacting the rescission would eliminate the program.

Rescission proposal no. R21–62

Agency: CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
Bureau: Corporation for National and Community Service
Account: Operating Expenses (485-2728 2021/2021)

Amount proposed for rescission: $483,469,244

Justification:

This proposal would rescind $483 million of the $843 million appropriated in FY 2021 for the AmeriCorps State and National (ASN) grants and AmeriCorps Volunteers in Service to America (VISTA) grants. These funds would be used to engage individuals in paid volunteer service, which does not serve a central function of the Federal Government. Americans are extremely generous in giving their time and money to charity, and they make individual decisions about which charities provide valuable services to society. There is little justification for the Federal Government to circumvent and centralize this process through its taxing and spending decisions. In addition, the Government Accountability Office and the Corporation for National and Community Service Inspector General have documented several instances of improper uses of ASN and VISTA grants by grantees, including lobbying. Enacting this rescission would eliminate FY 2021 grant funding for both the ASN and VISTA programs, while allowing for ongoing administration of existing grants, including grant closeout activities.

Rescission proposal no. R21–63

Agency: CORPORATION FOR NATIONAL AND COMMUNITY SERVICE
Bureau: Corporation for National and Community Service
Account: National Service Trust (485-8267/X)

Amount proposed for rescission: $185,000,000

Justification:

This proposal would rescind $185 million, the full amount appropriated in FY 2021 for the National Service Trust account. The National Service Trust account provides funds for educational awards to eligible volunteers who have completed a term of service. If the proposed rescissions to the AmeriCorps State and National and AmeriCorps Volunteers in Service to America grants are effectuated, these funds would not be necessary and should likewise be rescinded. Americans are extremely generous in giving their time and money to charity, and they make individual decisions about which charities provide valuable services to society. There is little justification for the Federal Government to circumvent and centralize this process through its taxing and spending decisions. Enacting this rescission would prevent the agency from providing additional educational awards.

Rescission proposal no. R21–64

Agency: DISTRICT OF COLUMBIA
Bureau: District of Columbia General and Special Payments
Account: Federal Payment for Resident Tuition Support (020-1736/X)

Amount proposed for rescission: $40,000,000

Justification:

This proposal would rescind $40 million, the full amount appropriated to the District of Columbia (DC) in FY 2021 for Resident Tuition Support. These funds would be used to subsidize college tuition costs for DC residents at the expense of Federal taxpayers. DC residents seeking to enroll in college are eligible for Federal programs available to all Americans, including Pell Grants, Federal student loans, and the American Opportunity Tax Credit. Enacting the rescission would eliminate the program.

Rescission proposal no. R21–65

Agency: DISTRICT OF COLUMBIA
Bureau: District of Columbia General and Special Payments
Account: Federal Payment to the District of Columbia Water and Sewer Authority (020-4446/X)

Amount proposed for rescission: $8,000,000

Justification:

This proposal would rescind $8 million, the full amount appropriated in FY 2021 for the Federal Payment to the District of Columbia (DC) Water and Sewer Authority. These funds would be used for the implementation of the Combined Sewer Overflow Long-Term Plan, which should be paid by ratepayers in the District, not Federal taxpayers. Enacting the rescission would eliminate Federal supplemental funding for this project but would not eliminate the District's progress on the program.

Rescission proposal no. R21–66

Agency: NATIONAL ENDOWMENT FOR THE ARTS
Bureau: National Endowment for the Arts
Account: Grants and Administration (417-0100/X)

Amount proposed for rescission: $110,000,000

Justification:

This proposal would rescind $110 million of the $168 million appropriated for operations of the National Endowment for the Arts. The National Endowment for the Arts provides assistance to organizations and individuals for projects and productions in the arts. These grants are not a Federal responsibility and consequently do not need Federal dollars. Enacting the rescission would allow orderly termination of the agency as requested in the FY 2021 Budget.

Rescission proposal no. R21–67

Agency: NATIONAL ENDOWMENT FOR THE HUMANITIES
Bureau: National Endowment for the Humanities
Account: Grants and Administration (418-0200/X)

Amount proposed for rescission: $118,000,000

Justification:

This proposal would rescind $118 million of the $168 million appropriated for operations of the National Endowment for the Humanities. The National Endowment for the Humanities provides assistance to organizations for support of activities in the humanities. These grants are not a Federal responsibility and consequently do not need Federal dollars. Enacting the rescission would allow orderly termination of the agency as requested in the FY 2021 Budget.

Rescission proposal no. R21–68

Agency: PRESIDIO TRUST
Bureau: Presidio Trust
Account: Presidio Trust (95-4331/X)

Amount proposed for rescission: $20,000,000

Justification:

This proposal would rescind $20 million, the full amount appropriated in FY 2021 for the Presidio Trust. The Presidio Trust is the Government agency charged with operating the Presidio of San Francisco outdoor recreation and sightseeing park without taxpayer support. This unrequested funding amounts to a congressional earmark for the Trust, which otherwise operates using lease revenues and other non-federally appropriated funding sources. Enacting the rescission would require the Trust to meet its mission using current resources.

Rescission proposal no. R21–69

Agency: NATIONAL GALLERY OF ART
Bureau: National Gallery of Art
Account: Salaries and Expenses (033-0200 2021/2022)

Amount proposed for rescission: $6,068,000

Justification:

This proposal would rescind $6 million of the $153 million appropriated for operations and maintenance of the National Gallery of Art, which houses a collection of both American and European art. These funds are not necessary to meet the Federal obligations that sustain the National Gallery's mission. Enacting the rescission would reduce the amount provided to the level requested in the FY 2021 Budget to more effectively allocate the American people's money.

Rescission proposal no. R21–70

Agency: NATIONAL GALLERY OF ART
Bureau: National Gallery of Art
Account: Repair, Restoration and Renovation of Buildings (033-0201/X)

Amount proposed for rescission: $8,790,000

Justification:

This proposal would rescind $9 million of the $23 million appropriated for upkeep of the facilities of the National Gallery of Art, which houses a collection of both American and European art. These funds are not necessary to meet the Federal obligations that sustain the National Gallery's mission. Enacting the rescission would reduce the amount provided to the level requested in the FY 2021 Budget.

Rescission proposal no. R21–71

Agency: WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS
Bureau: Woodrow Wilson International Center for Scholars
Account: Salaries and Expenses (033-0400 2021/2022)

Amount proposed for rescission: $5,800,000

Justification:

This proposal would rescind $6 million of the $14 million appropriated for operations of the Woodrow Wilson Center. The Center supports scholars with both public and private funds, however the Center is consistently appropriated in excess of the amount deemed necessary for core Federal responsibilities and activities. Enacting the rescission would reduce the amount provided to a level equal to funding requested in the FY 2021 Budget.

Rescission proposal no. R21–72

Agency: LEGISLATIVE BRANCH
Bureau: Botanic Garden
Account: Botanic Garden (009-0200 2021/2021)

Amount proposed for rescission: $9,514,500

Justification:

This proposal would rescind $10 million of the $13 million appropriated in FY 2021, the estimated remaining balance, for the U.S. Botanic Garden. The Botanic Garden is a museum that seeks to demonstrate the aesthetic, cultural, economic, therapeutic, and ecological importance of plants to the well-being of humankind. These funds would be used for the operating budget of the congressional Botanic Garden, which is not a core Article I legislative function. Enacting the rescission would eliminate taxpayer support for the program.

Rescission proposal no. R21–73

Agency: LEGISLATIVE BRANCH
Bureau: Botanic Garden
Account: Botanic Garden (009-0200 2021/2025)

Amount proposed for rescission: $6,225,000

Justification:

This proposal would rescind $6 million of the $8 million appropriated in FY 2021, the estimated remaining balance, for the U.S. Botanic Garden. The Botanic Garden is a museum that seeks to demonstrate the aesthetic, cultural, economic, therapeutic, and ecological importance of plants to the well-being of humankind. These funds would be used for special project staffing, facility improvements, and minor construction for the congressional Botanic Garden, which is not a core Article I legislative function. Enacting the rescission would eliminate taxpayer support for the program.

[FR Doc. 2021–01328 Filed 1–21–21; 8:45 am]

BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0272]

Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Westinghouse AP1000 Pressurized Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–2103, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Westinghouse AP1000 Pressurized Water Reactors.''

DATES: NUREG–2103 is effective on January 22, 2021.

ADDRESSES: Please refer to Docket ID NRC–2011–0272 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–2011–0272. Address questions about Docket IDs 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.* NUREG–2103 is available in ADAMS under Accession No. ML20357A103. This document is also available on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/nuregs/.*
- *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 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

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FOR FURTHER INFORMATION CONTACT: Lauren Nist, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6043, email: *Lauren.Nist@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

NUREG–2103 provides the basis for development of content valid examinations used for licensing operators at Westinghouse AP1000 pressurized water reactors under the Commission's regulations contained in part 55 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Operator Licenses.'' The examinations developed using NUREG–2103 along with NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' will sample the topics listed in 10 CFR part 55.

II. Additional Information

Draft NUREG–2103 was published in the **Federal Register** for public comment on November 29, 2011 (76 FR 73720). The comment period closed on December 31, 2016. The NRC staff's evaluation and resolution of the public comments are documented in ADAMS under Accession No. ML18240A235. Following issuance of the draft NUREG–2103 for public comment, additional operating procedures were developed for the AP1000, which resulted in the NRC staff adding related content to the KA catalog.

III. Congressional Review Act

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

Dated: January 15, 2021.

For the Nuclear Regulatory Commission.

Christian B. Cowdrey,

Chief, Operator Licensing and Human Performance Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–01406 Filed 1–21–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0192]

Consolidated Decommissioning Guidance, Characterization, Survey, and Determination of Radiological Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment; extension of comment period; public meeting.

SUMMARY: On December 8, 2020, the U.S. Nuclear Regulatory Commission (NRC) issued a draft report for comment, NUREG–1757, Volume 2, Revision 2, ''Consolidated Decommissioning Guidance, Characterization, Survey, and Determination of Radiological Criteria.'' The public comment period was originally scheduled to close on February 8, 2021. The NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments. Additionally, the NRC staff would like to announce that it will hold a public meeting on Monday, March 15, 2021, to discuss updates to the guidance document and provide members of the public an opportunity to comment on the draft guidance document. Details regarding the public meeting and agenda will be forthcoming on the NRC's public website *https://www.nrc.gov/pmns/mtg.*

DATES: The due date of comments requested in the document published on December 8, 2020 (85 FR 79044) is extended. Comments should be filed no later than April 8, 2021. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0192. 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.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001; telephone: 301 415–4015; email: *Cynthia.Barr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0192 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0192.
- *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.* NUREG–1757, Volume 2, Revision 2, is located at ADAMS Accession Number ML20273A010.

• *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 or 301–415–4737 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2020–0192 in your comment submission.

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

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

II. Discussion

On December 8, 2020 (85 FR 79044), the NRC issued for public comment draft NUREG–1757, Volume 2, Revision 2, ''Consolidated Decommissioning Guidance, Characterization, Survey, and Determination of Radiological Criteria.'' The purpose was to provide interested stakeholders an opportunity to comment on the draft guidance document. The public comment period was originally scheduled to close on February 8, 2021. The NRC has decided to extend the public comment period on this document until April 8, 2021, to allow more time for members of the public to submit their comments. Additionally, the NRC staff will hold a public meeting on Monday, March 15, 2021, to discuss updates to the guidance document and provide members of the public an opportunity to comment on the draft guidance document. Details regarding the public meeting and agenda will be forthcoming on the NRC's public website *https://www.nrc.gov/pmns/mtg.*

Dated: January 14, 2021.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–01379 Filed 1–21–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301; NRC–2021–0021]

NextEra Energy Point Beach, LLC; Point Beach Nuclear Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Subsequent license renewal application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the subsequent renewal of Renewed Facility Operating License Nos. DPR–24 and DPR–27, which authorize NextEra Energy Point Beach, LLC (NextEra, the applicant) to operate Point Beach Nuclear Plant, Units 1 and 2 (Point Beach), respectively. The subsequent renewed operating licenses would authorize the applicant to operate Point Beach for an additional 20 years beyond the period specified in each of the current renewed operating licenses. The current renewed operating licenses for Point Beach expire as follows: Unit 1 on October 5, 2030, and Unit 2 on March 8, 2033.

DATES: A request for a hearing or petition for leave to intervene must be filed by March 23, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0021 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–2021–0021. 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.

• *Public Library:* A copy of the subsequent license renewal application for Point Beach can be accessed at the following public library (however, the library is currently closed due to the Coronavirus Disease 2019 public health emergency and, accordingly, access will be available once the library has reopened): Lester Public Library, 1001 Adams St., Two Rivers, Wisconsin 54241. In addition, the application can be accessed on the website of the Lester Public Library at *http://www.lesterlibrary.org.*

• *NRC's PDR:* 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 or 301–415–4737 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bill Rogers, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2945, email: *Bill.Rogers@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated November 16, 2020 (ADAMS Package Accession No. ML20329A292), NextEra filed an application pursuant to part 54 of title 10 of the *Code of Federal Regulations* (10 CFR) for subsequent renewal of the renewed operating licenses for Point Beach, which authorize each unit to operate at 1,800 megawatts thermal. The Point Beach units are pressurized-water reactors designed by Westinghouse Electric Company and are located near Manitowoc, Wisconsin. A notice of receipt of the subsequent license renewal application (SLRA) was published in the **Federal Register** (FR) on December 29, 2020 (85 FR 85685).

By letter dated January 15, 2021 (ADAMS Accession No. ML21006A417),

the NRC staff determined that NextEra has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is, therefore, acceptable for docketing. The current Docket Nos. 50–266 and 50–301 for Renewed Facility Operating License Nos. DPR–24 and DPR–27, respectively, will be retained. The determination to accept the SLRA for docketing does not constitute a determination that subsequent renewed operating licenses should be issued, and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested subsequent renewed operating licenses, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review; and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis and that any changes made to the plant's current licensing basis will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement as a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated June 2013. In considering the SLRA, the Commission must find that the applicable requirements of subpart A of 10 CFR part 51 have been satisfied, and that any matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the NRC staff intends to hold public scoping meetings. Detailed information regarding the environmental scoping meetings will be the subject of a separate **Federal Register** notice.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submission (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a

request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted a request for exemption from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Information about subsequent license renewal can be found on the NRC's website at *https://www.nrc.gov/reactors/operating/licensing/renewal/subsequent-license-renewal.html.* A copy of the application for subsequent renewal of the renewed operating licenses for Point Beach is available on the NRC's website at *https://www.nrc.gov/docs/ML2032/ML20329A292.html,* while the application is under review. The application may be accessed in ADAMS through the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/adams.html* under ADAMS Package Accession No. ML20329A292. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resources@nrc.gov.*

Dated: January 15, 2021.

For the Nuclear Regulatory Commission.

Lauren K. Gibson,

Chief, License Renewal Projects Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–01410 Filed 1–21–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. T2021–1; Order No. 5817]

Income Tax Review

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recent Postal Service filing concerning the calculation of the assumed Federal income tax on competitive products income for Fiscal Year 2020. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 5, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

In accordance with 39 U.S.C. 3634 and 39 CFR 3060.40 *et seq.,* the Postal Service filed its calculation of the assumed Federal income tax on competitive products income for fiscal year (FY) 2020.[1] The calculation details the FY 2020 competitive product revenue and expenses, the competitive products net income before tax, and the assumed Federal income tax on that net income.

II. Notice of Commission Action

In accordance with 39 CFR 3060.42, the Commission establishes Docket No. T2021–1 to review the calculation of the assumed Federal income tax and supporting documentation.

The Commission invites comments on whether the Postal Service's filing in this docket is consistent with the policies of 39 U.S.C. 3634 and 39 CFR 3060.40 *et seq.* Comments are due no later than March 5, 2021. The Postal Service's filing can be accessed via the Commission's website (*http://www.prc.gov*).

The Commission appoints Jennaca D. Upperman to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. T2021–1 to consider the calculation of the assumed Federal income tax on competitive products for FY 2020.

2. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than March 5, 2021.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2021–01390 Filed 1–21–21; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Notice of the United States Postal Service of Submission of the Calculation of the FY 2020 Assumed Federal Income Tax on Competitive Products, January 14, 2021.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, January 27, 2021.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: January 19, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–01530 Filed 1–19–21; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90933; File No. SR–IEX–2021–01]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Way It Handles Odd Lot Orders by Allowing Them To Be Displayed Orders and To Aggregate To Form a Protected Quotation

January 15, 2021.

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 January 6, 2021, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[3] and Rule 19b–4 thereunder,[4] IEX is filing with the Commission a proposed rule change to modify the way it handles odd lot orders by allowing them to be displayed

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(1).
[4] 17 CFR 240.19b–4.

orders and to aggregate to form a protected quotation. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [5] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[6]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization 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 modify the way it handles odd lot orders [7] by allowing them to be displayed orders and to aggregate to form a protected quotation. Specifically, the Exchange proposes to amend IEX Rules 11.190(b), 11.220(a), and 11.240(c) to provide that a User may enter displayed [8] as well as non-displayed [9] odd lot orders and to allow displayed odd lot orders to aggregate to form a Protected Quotation.[10] Additionally, the Exchange proposes to make related changes to IEX Rules 11.190(h) and 11.230(a)(4) to prevent a displayed odd lot order that is not protected from resulting in a lock or cross of IEX's Order Book.[11] The Exchange also proposes to make conforming changes to IEX Rules 11.190(b) and 11.240(c). This proposal would align IEX's treatment of odd lot orders with that of the other national securities exchanges that trade equities (*i.e.,* equities exchanges), as detailed below.

Background

Currently, all odd lot orders on IEX are treated as non-displayed, whether the User [12] entered the order into the System [13] as an odd lot, or if the order began as a displayed round [14] or mixed [15] lot order, and was subsequently decremented to an odd lot order by execution or User order amendment.[16] When a displayed round or mixed lot order decrements to a non-displayed odd lot order, the order also loses its execution priority as a displayed order and also receives a new timestamp resulting in the order being ranked behind all resting displayed and non-displayed orders on the Order Book at the same price level.[17] Additionally, a displayed order that becomes non-displayed because it decremented to an odd lot will no longer be disseminated on IEX's TOPS,[18] DEEP,[19] and Data Platform [20] data feeds (collectively, the ''Data Feeds''), as applicable.

Odd lots comprise an increasingly large portion of all securities transactions—in October 2020, 35.6% of all trades on IEX were odd lot executions. Odd lots account for an even larger percentage of trades on other equities exchanges—in October 2019, nearly half of all trades on equities exchanges were odd lot trades, which was nearly double the number of odd lot trades in 2016.[21] IEX understands that this growth in odd lot trading is driven by the increasing prevalence of stocks priced above $1,000 per share (which translates to more than $100,000 in notional value for the standard round lot of 100 shares), as well as computerized trading strategies that increasingly employ odd lots.[22] However, odd lots are not subject to the same requirements as round lot orders under Regulation NMS, primarily in that only round lots can be protected quotations.[23] Thus, the Commission's Division of Trading and Markets has provided guidance that:

> trading centers are permitted to establish their own rules for handling odd-lot orders and the odd-lot portions of mixed-lot orders. For example, although trading centers are not required to handle odd-lot orders or the odd-lot portions of mixed lot orders in accordance with the requirements for automated quotations set forth in Rule 600(b)([4]), they are free to incorporate such requirements in their rules if they wish to do so.[24]

Consistent with the above guidance, other equities exchanges have adopted rules that allow for odd lot orders to be displayed, which affects the orders' execution priority and quotation dissemination on each exchange's depth of book feed, where applicable.[25] In addition, equities exchanges enable displayed odd lot orders to aggregate at the same or multiple price points that equal at least one round lot to form a protected quotation under Rule 600(b)(62) of Regulation NMS.[26] Similarly, displayed odd lot orders can also be aggregated with displayed round and mixed lot orders at the same price level to form a protected quotation. When displayed odd lot orders aggregate to at least one round lot (either with other odd lot orders or with displayed round and/or mixed lot orders) and comprise the best bid or offer for an exchange, the other equities exchanges treat the aggregated quotation as their top of book quotation, which they disseminate to the appropriate Securities Information Processor (''SIP'')

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

[7] An odd lot order is generally any order of less than 100 shares (the size of a round lot order). *See* IEX Rule 11.180(a).

[8] *See* IEX Rule 11.190(b)(1). IEX offers three order types that may be entered as displayed orders: limit, reserve, and Discretionary Limit. *See* IEX Rule 11.190(a)(1), (b)(2), and (b)(7).

[9] *See* IEX Rule 11.190(b)(3).

[10] *See* IEX Rule 1.160(bb).

[11] *See* IEX Rule 1.160(p).

[12] *See* IEX Rule 1.160(qq).

[13] *See* IEX Rule 1.160(nn).

[14] A round lot order is generally any order of 100 shares or a multiple thereof (*e.g.,* a 1,000 share order constitutes ten (10) round lots). *See* IEX Rule 11.180(a).

[15] A mixed lot order is generally any order of more than 100 shares that is not a multiple of 100 shares (*e.g.,* orders for 101 shares and 299 shares are both mixed lot orders). *See* IEX Rule 11.180(a).

[16] *See* IEX Rule 11.190(b)(4).

[17] *See* IEX Rule 11.220(a)(1)(C)(vii).

[18] *See* IEX Rule 11.330(a)(1) (describing how, among other things, TOPS offers aggregated top of book quotations for all displayed orders resting on the Order Book).

[19] *See* IEX Rule 11.330(a)(3) (describing how, among other things, DEEP provides ''aggregated depth of book quotations for all displayed orders resting on the Order Book at each price level'').

[20] The IEX Data Platform, known as the ''TOPS Viewer,'' offers both aggregated top of book and aggregated depth of book quotations for all displayed orders resting on the Order Book. *See* IEX Rule 11.330(a)(2). The IEX Data Platform can be accessed at *https://iextrading.com/apps/tops/.*

[21] *See* Osipovich, Alexander: ''Tiny 'Odd Lot' Trades Reach Record Share of U.S. Stock Market,'' Wall Street Journal (October 23, 2019).

[22] *See supra* note 21.

[23] Regulation NMS defines ''bids'' and ''offers'' as the bid price or offer price for one or more round lots of an NMS security, and those definitions are referenced in the definitions of ''quotations,'' ''protected bids,'' and ''protected offers.'' *See* 17 CFR 242.600(b)(8), (b)(66), and (b)(61).

[24] *See* FAQ 7.03: ''Odd-Lot Orders and Odd-Lot Portions of Mixed-Lot Orders,'' Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS (April 4, 2008), available at *https://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm#sec7.*

[25] *See, e.g.,* The New York Stock Exchange LLC (''NYSE'') Rule 7.36(b) (''Display'') (describing how unless otherwise instructed, ''odd-lot sized Limit Orders . . . are considered displayed for ranking purposes'').

[26] *See, e.g.,* The Nasdaq Stock Market LLC (''Nasdaq'') Rule 4756(c) (''Entry and Display of Quotes and Orders'') (describing the process for how Nasdaq aggregates displayed odd lot orders with other displayed interest to calculate its best ranked displayed orders for dissemination as the exchange's top of book quotation).

and their own top of book feeds, as applicable.[27]

Based upon informal feedback from Members,[28] IEX understands that there is general interest in having IEX offer displayed odd lot orders, so that such orders are visible on the Exchange's depth of book feeds, are eligible to aggregate to form a protected quotation, and retain their execution priority consistent with how displayed odd lot orders are treated on other equities exchanges.

Proposal

The Exchange proposes to amend IEX Rules 11.190(b), 11.220(a), and 11.240(c) to provide that Users may enter odd lot orders as either displayed or non-displayed, rank displayed odd lot orders before non-displayed orders at the same price, show displayed odd lot orders on IEX's DEEP and Data Platform data feeds (collectively the ''Depth of Book Data Feeds''), and aggregate displayed odd lot orders at the same or multiple price points that equal at least one round lot for purposes of transmitting the Exchange's best ranked displayed orders to the appropriate SIP for each security and to IEX's TOPS and Data Platform data feeds (collectively the ''Top of Book Data Feeds'').[29]

In addition, the Exchange proposes two related changes to prevent a displayed odd lot order that is not aggregated to form a protected quotation from resulting in a lock or cross of IEX's Order Book, as well as conforming changes to IEX Rules 11.190(b) and 11.240(c), each as described below.

Accordingly, with respect to displaying odd lot orders, IEX proposes to amend all the rules describing odd lot orders as non-displayed to reflect that odd lot orders may be either displayed or non-displayed, based upon User instruction per order. Consistent with this change, a displayed round lot order that decrements to an odd lot will retain its displayed status and execution priority, and IEX therefore proposes to remove any references to how decrementing a displayed round lot to an odd lot causes the order to lose its displayed status and execution priority. Thus, displayed odd lot orders would have priority over any non-displayed orders booked at the same price.[30]

As proposed, IEX will display odd lot orders in the same manner it displays round or mixed lot orders, with the exception that an odd lot order that cannot be aggregated with other orders to form at least a round lot, will not be eligible to form a protected quotation and to be disseminated as IEX's top of book quotation. The proposed changes also enumerate the manner in which IEX will aggregate odd lot orders for purposes of forming a quotation that is eligible to be a protected quotation. Specifically, IEX will aggregate all of the displayed odd lot orders at the highest price to buy (or lowest price to sell) wherein the aggregate size of all displayed buy (sell) interest in the System greater than or equal (less than or equal) to that price is one round lot or greater. When the aggregate quotation is the Exchange's best ranked displayed order, IEX will disseminate this top of book quotation, rounded down to the nearest round lot,[31] to the appropriate SIP and the entire size of the top of book quotation to IEX's Top of Book Data Feeds.[32] As displayed orders, all of IEX's displayed odd lot interest will also be aggregated at each price level and disseminated to IEX's Depth of Book Data Feeds.[33]

The following example demonstrates how, as proposed, odd lot bids[34] would be aggregated both for dissemination to IEX's Data Products and the SIPs, when applicable:

- Protected NBBO[35] for a stock is 10.00 x 10.10.
- IEX's order book has two resting displayed bids for the stock:
  - Order A is a displayed odd lot to buy 25 shares at $10.02.
  - Order B is a displayed odd lot to buy 65 shares at $10.02.
- Orders A and B do not aggregate to a protected quotation and will not be disseminated to the Top of Book Data Feeds and the SIPs.
- IEX will disseminate to its Depth of Book Data Feeds that it has interest to buy 90 shares at $10.02.
- Order C arrives: a displayed odd lot order to buy 30 shares at $10.01.
- Orders A, B, and C will aggregate to form a protected quotation at 10.01, which is disseminated to the SIP (as one round lot) and Top of Book Data Feeds as interest to buy 120 shares at $10.01.
- IEX will disseminate to its Depth of Book Data Feeds that it has interest to buy 90 shares at $10.02 and 30 shares at $10.01.

As noted above and discussed in the Statutory Basis section below, these proposed changes would align IEX's treatment of odd lot orders with that of the other equities exchanges. Specifically, other equities exchanges allow odd lot orders to be treated as displayed or non-displayed[36] and to aggregate in the manner proposed.[37]

IEX also proposes several related rule changes to prevent a displayed odd lot order that is not protected from resulting in a lock or cross of IEX's Order Book.

First, IEX proposes to modify its non-displayed price sliding rules to prevent a displayed odd lot order priced equal to or more aggressively than the Midpoint Price[38] from locking or crossing a non-displayed incoming or resting order when the orders are unable to execute against each other because of the non-displayed order's specific conditions.[39] This issue does not arise currently because non-displayed orders are never priced more aggressively than the Midpoint Price in accordance with the ''Midpoint Price Constraint''[40] and a displayed order priced equal to or more aggressively than the Midpoint Price would result in a change in the NBB[41] or NBO[42] and a corresponding

[27] *See, e.g.,* Nasdaq Rule 4756(c).

[28] *See* IEX Rule 1.160(s).

[29] These proposed rule changes are consistent with how other equities exchanges handle displayed odd lot orders. *See supra* notes 25 and 26.

[30] *See* IEX Rule 11.220(a)(1)(B).

[31] The SIPS only accept quotations in round lots.

[32] *See* IEX Rule 11.330(a)(1) and (2).

[33] *See* IEX Rule 11.330(a)(2) and (3).

[34] The example focuses on the aggregation of displayed odd lot orders to buy, but the same process applies to aggregating displayed odd lot orders to sell, with the exception that the displayed odd lot orders to sell will aggregate at the lowest price wherein the aggregate size of all displayed interest to sell is one round lot or greater.

[35] *See* IEX Rule 1.160(cc).

[36] *See, e.g.,* NYSE Rule 7.36(b)(1) (describing how unless otherwise instructed, ''odd-lot sized Limit Orders . . . are considered displayed for ranking purposes''); Cboe BZX Exchange, Inc. (''Cboe BZX'') Rule 11.9(c)(2); Nasdaq Rule 4703(b); and MIAX PEARL, LLC (''MIAX Pearl'') Rule 2611(a); and MEMX LLC (''MEMX'') Rules 11.2(a) and 11.6(q)(2). *See also* Securities Exchange Act Release No. 87221 (October 3, 2019), 84 FR 54195 (October 9, 2019) (SR–LTSE–2019–02) (detailing how the Long Term Stock Exchange, Inc. (''LTSE'') removed all references to odd lot orders being non-displayed, including removing language about how round lots decrementing to an odd lot become non-displayed and lose their priority, and clarifying that displayed odd lots can aggregate to form a protected quotation).

[37] *See, e.g.,* Nasdaq Rule 4756(c); NYSE Rule 7.36(b)(3); Cboe BZX Rule 21.6(d); MIAX Pearl Rule 2616(b); MEMX Rule 11.9(b)(2); and LTSE Rule 11.410.

[38] *See* IEX Rule 1.160(t).

[39] The primary situation in which this would arise is if the non-displayed order is a Minimum Quantity order with a User instruction that it cannot match with an order the size of the displayed odd lot. *See* IEX Rule 11.190(b)(11). Significantly, only non-displayed orders can have specific conditions such as a Minimum Quantity that could prevent a match. *Id.* It is also possible that a non-displayed order would be subject to another specific condition that would prevent matching with a displayed odd lot order in such circumstances, such as a Corporate Discretionary Peg (''C-Peg'') order that cannot match because of the pricing conditions applicable to C-Peg orders. *See* IEX Rule 11.190(b)(16).

[40] *See* IEX Rule 11.190(h)(2).

[41] *See* IEX Rule 1.160(u).

[42] *See* IEX Rule 1.160(u).

change to the Midpoint Price. However, with the introduction of displayed, but unprotected, odd lot orders, there is the potential that a displayed odd lot order would post on the Order Book at a price equal to or more aggressive than the Midpoint Price and would lock or cross [43] a contra-side resting non-displayed order (or be locked or crossed by an incoming non-displayed order) if the non-displayed order's specific conditions prevent it from matching with the displayed odd lot order.[44]

In order to address this possible scenario, IEX proposes to amend the non-displayed price-sliding rules so that the price of a non-displayed order that, because of its specific conditions, is not executable against a contra-side displayed odd lot order that is priced equal to or more aggressively than the Midpoint Price is adjusted to one (1) minimum price variant (''MPV'') [45] less aggressive than the price of the contra-side displayed odd lot order. Specifically, IEX proposes to modify IEX Rule 11.190(h)(2), and add new subsection (A), to specify that in such a circumstance, the non-displayed order will book at a price one (1) MPV less aggressive than the price of the contra-side displayed odd lot order.

These proposed changes to the non-displayed price sliding rules are thus designed to address the potential that an unprotected displayed odd lot order will result in the IEX Order Book becoming locked or crossed, by sliding orders in a reasonably expected manner based on current IEX rules, and consistent with the rules of several other equities exchanges. For example, Nasdaq re-prices non-displayed orders to a price one (1) MPV less aggressive than the price of a resting contra-side displayed odd lot order if the non-displayed order would lock or cross the displayed odd lot order because the non-displayed order's minimum quantity condition prevents the two orders from matching.[46] Similarly, to avoid a lock or cross on its order book, NYSE reprices orders with a minimum trade size (''MTS'') modifier to a less aggressive price than the price of a resting contra-side displayed odd lot order with which it would have matched but for the MTS modifier.[47] And several other exchanges would execute a non-displayed order only at a less aggressive price than a contra-side unprotected displayed odd lot order to prevent the displayed odd lot order crossing each exchange's order book.[48]

This proposed change to the non-displayed price sliding rules applies to all non-displayed orders except for Discretionary Peg (''D-Peg'') and C-Peg orders, which also can have specific conditions that prevent them from matching an aggressively priced contra-side displayed odd lot order with which they would otherwise match. However, because D-Peg and C-Peg orders book at a price one (1) MPV less aggressive than the NBBO,[49] they are different from other non-displayed orders and cannot lock or cross a displayed odd lot order priced equal to or more aggressive than the Midpoint Price.[50] However, both D-Peg and C-Peg orders have a ''discretionary price'' that allows them to exercise discretion and execute up to the less aggressive of the limit price (if any) or the Midpoint Price. Therefore, there is a limited circumstance in which a D-Peg or C-Peg could execute at a price that locks or crosses a displayed odd lot order priced at or more aggressively than the Midpoint Price. Accordingly, IEX also proposes to amend the non-displayed price sliding rules to state that in this scenario, the D-Peg or C-Peg order would not be able to exercise discretion up to the Midpoint Price, and instead the discretionary price for a D-Peg or C-Peg order will be either the less aggressive of the order's limit price (if any) or one (1) MPV less aggressive than the price of the contra-side unprotected displayed odd lot order. This manner of limiting the amount of discretion a D-Peg or C-Peg can exercise to prevent locking or crossing a contra-side displayed odd lot order is also consistent with other aspects of the proposed rule change to avoid locking or crossing an unprotected displayed odd lot order.

Second, the Exchange proposes to revise IEX Rule 11.230(a)(4) to provide that when a displayed order that was previously subject to price sliding to avoid locking or crossing a contra-side protected quotation of an another national securities exchange becomes eligible to be re-priced to a more aggressive price as a result of a change in the NBBO, it will trade with an unprotected displayed odd lot on the IEX Order Book that it would lock or cross as it re-prices. In this circumstance, the orders will execute according to the priority of each order, and the remover of liquidity will be the order with the newest timestamp.

Under existing rules, any displayed orders that would be locked or crossed by a displayed order subject to re-pricing would either change the Protected NBBO [51] (if the displayed order is the best bid or best offer), or re-price such that the displayed order does not lock or cross the Protected NBBO.[52] With the introduction of unprotected displayed odd lot orders, it is now possible for a displayed order subject to display price sliding to re-price to a price where it locks or crosses a contra-side unprotected displayed odd lot order. Because IEX rules provide that it will never display a locked market, nor can a locked or crossed market exist within the System,[53] in such a scenario IEX must either again re-price one or both orders, or allow them to execute against each other. IEX believes that allowing these two orders to match when they become executable after re-pricing is consistent with investor expectations that marketable orders will match and could result in price improvement when the trade is at a better price than the NBBO. By contrast, IEX believes that subjecting displayed orders to additional price sliding to avoid locking or crossing a small odd lot order would not benefit investors, would disadvantage the re-pricing orders (because they receive a new timestamp and corresponding reduced priority), and would create unnecessary complexity.

IEX's proposal is consistent with the manner in which NYSE matches orders

[43] A non-displayed order would cross the odd lot order if the non-displayed order is priced at the Midpoint and would lock if priced at the same price as the odd lot order.

[44] This scenario would not arise if the contra-side order is a displayed order because displayed orders cannot include a minimum quantity and would execute against the odd lot order.

[45] *See* IEX Rule 11.210.

[46] *See* Nasdaq Rule 4703(e).

[47] *See* NYSE Rule 7.31(i)(3)(C)(i).

[48] These exchanges would execute the order at a price ½ MPV less aggressive than the contra-side displayed odd lot. *See* Cboe BZX Rules 11.13(a)(4)(C) and (D); MEMX Rules 11.10(a)(4)(C) and (D); and MIAX Pearl Rules 2617(a)(4)(C) and (D). In the same situation, IEX is proposing to re-price the non-displayed order to a price one (1) MPV less aggressive than the contra-side displayed odd lot order, which IEX believes is a minor distinction from the Cboe BZX, MEMX, and MIAX ½ MPV approach.

[49] *See* IEX Rule 1.160(u).

[50] *See* IEX Rule 11.190(b)(10) and (16).

[51] *See* IEX Rule 11.240(c)(1).

[52] Under existing rules, a displayed order (all of which are currently protected quotations) that on entry would lock or cross another order on the IEX Order Book will be executed against the resting order. Further, a displayed order will be subject to displayed price sliding to avoid locking or crossing a protected quotation of another national securities exchange and be subsequently re-priced to a more aggressive price if the NBBO changes and it would no longer lock or cross a protected quotation of another national securities exchange. However, a displayed order will not be able to re-price to a more aggressive price if the NBBO has not changed, even if the contra-side protected quotation is now an IEX protected quotation. This is because resting displayed orders do not become active orders that take other resting orders but wait for potential execution with either an incoming order or a non-displayed order that has become active through the recheck process.

[53] *See* IEX Rule 11.230(a)(4)(C).

that become marketable against each other as a result of one or both orders re-pricing.[54] And this proposal is also analogous to how several exchanges with post-only order types allow such orders to take liquidity and match under limited circumstances when re-pricing.[55]

Similarly, IEX's proposal to have the orders execute according to the priority of each order is consistent with IEX's order priority rule,[56] other exchange's rules,[57] and the manner in which the System invites resting orders to recheck the IEX Order Book.[58] And the proposal to have the newest order be the remover of liquidity is consistent with the existing practice that the newer arriving order takes any liquidity it finds on an exchange's order book.[59]

Accordingly, IEX proposes to amend IEX rules as described below:

• Modify IEX Rule 11.190(b)(1) (''Displayed Order'') to remove the language in subsection (H) providing that displayed orders must be at least one round lot, and that a round lot that decrements to an odd lot will be treated as non-displayed and will receive a new timestamp, and add new text specifying that displayed orders can be odd lots, mixed lots, or round lots.

• Modify IEX Rule 11.190(b)(2) (''Reserve Order'') to remove the language in subsection (2)(H) providing that reserve orders must be at least one round lot, and to remove the language stating that if the displayed portion of the reserve order decrements to less than a round lot it loses its displayed status and receives a new timestamp. And add new text specifying that if a displayed reserve order is decremented to less than one round lot, the order will continue to be treated as a displayed order and will retain its priority.

• Modify IEX Rule 11.190(b)(4) (''Odd Lot Order'') to remove the language providing that all odd lot orders are non-displayed, and that a displayed order that decrements to less than a round lot is treated by the System as a non-displayed order, and add language specifying that odd lot orders marked for display are only eligible to be protected quotations if aggregated to form at least one round lot.

• Modify IEX Rule 11.190(b)(5) (''Mixed Lot Order'') to remove the language providing that any displayed mixed lot order that decrements to less than a round lot is treated by the System as a non-displayed order.

• Modify Rule IEX 11.190(b)(7) (''Discretionary Limit Order'') to remove the text in subsection (E)(vii) describing how D-Limit orders can only be displayed if they are at least one round lot, and that if a D-Limit order is decremented to less than a round lot it will be treated as non-displayed and given a new timestamp.

• Modify IEX Rule 11.220 (''Priority of Orders'') to remove subsection (a)(1)(C)(vii), which states that a displayed order that decrements to less than a round lot receives a new timestamp and is considered a non-displayed order. And renumber subsection (a)(1)(C)(viii) to (a)(1)(C)(vii), because of the removal of the current subsection (a)(1)(C)(vii).

• Modify IEX Rule 11.220(a)(3) (''Decrementing Order Quantity and Priority'') to remove the two references to how a displayed round lot order becomes a non-displayed order if the order is decremented to less than a round lot, as set forth in the to-be-removed Rule 11.220(a)(1)(C)(vii).

• Modify IEX Rule 11.240(c) (''Dissemination of Quotation Information'') by adding new subsection (2) providing that pursuant to Rule 602 of Reg NMS, the Exchange will transmit for display to the appropriate SIP for each security the aggregate best ranked orders, as detailed in the following subsections:

○ Add new subsection (A), which specifies that the best priced buy order will be the highest price to buy wherein the aggregate size of all displayed buy interest greater than or equal to that price is one round lot or higher.

○ Add new subsection (B), which specifies that the aggregated best priced buy order in subsection (A) will be rounded down to the nearest round lot.

○ Add new subsection (C), which specifies that the best priced sell order will be the lowest price to sell wherein the aggregate size of all displayed sell interest less than or equal to that price is one round lot or higher.

○ Add new (D), which specifies that the aggregated best priced sell order in subsection (C) will be rounded down to the nearest round lot.

• Amend IEX Rule 11.190 to prevent a displayed odd lot order priced equal to or more aggressively than the Midpoint Price from locking or crossing a non-displayed incoming or resting order when the orders are unable to execute against each other because of the non-displayed order's specific conditions as follows:

○ Modify IEX Rule 11.190(h)(2) (''Non-Displayed Price Sliding'') to add language providing that a displayed odd lot order booked at a price equal to or more aggressive than the Midpoint Price will affect the resting or discretionary price of non-displayed resting orders as set forth in new subsections (A) and (B).

▪ Add subsection (A) specifying that a non-displayed order (other than a D-Peg or C-Peg) that would otherwise be executable against a contra-side displayed odd lot order priced equal to or more aggressively than the Midpoint Price, but for the non-displayed order's specific conditions, will be ranked and displayed by the System at one (1) MPV less aggressive than the price of the contra-side displayed odd lot order.

▪ Add subsection (B) specifying that a D-Peg or C-Peg order that would otherwise be executable against a contra-side displayed odd lot order priced equal to or more aggressively than the Midpoint Price, but for the D-Peg or C-Peg order's specific conditions, will be booked by the System in the manner set forth in Rule 11.190(b)(10) or Rule 11.190(b)(16), respectively, but the discretionary price of the order will be limited to the less aggressive of the limit price, if any, or one (1) MPV less aggressive than the price of the contra-side displayed odd lot order.

○ Modify IEX Rule 11.190(b)(10) (''D-Peg'') to make a conforming change specifying that the order's discretionary price may be changed as set forth in new IEX Rule 11.190(h)(2)(B).

○ Modify IEX Rule 11.190(b)(16) (''C-Peg'') to make a conforming change specifying that the order's discretionary price may be changed as set forth in new IEX Rule 11.190(h)(2)(B).

• Amend IEX Rule 11.230 to provide that when a displayed order that was previously subject to price sliding to avoid locking or crossing a contra-side protected quotation of an another national securities exchange becomes eligible to be re-priced to a more aggressive price as a result of a change in the NBBO it will trade with an unprotected displayed odd lot on the IEX Order Book that it would lock or cross as it re-prices as follows:

○ Add subsection (E) to IEX Rule 11.230(a)(4) which specifies that in the case of a displayed order previously subject to price sliding, upon a change to the Order Book or the NBBO that would result in the displayed order re-pricing to a more aggressive price that would lock or cross a resting unprotected displayed odd lot order, the re-pricing order and the displayed odd lot order will execute according to the priority of each order, and the remover of liquidity will be the order with the newest timestamp.

• Make two conforming changes to IEX Rule 11.240(c)(1):

○ Move the phrase ''pursuant to IEX Rule 11.220'' to be clear it applies to both best-ranked orders to buy and best ranked orders to sell

○ Remove the extraneous sentence about the Exchange maintaining connectivity to the SIPs, which is already addressed in detail in IEX Rule 11.510.

Implementation

This proposed rule change will be immediately effective upon filing, but

[54] *See* NYSE Rules 7.37(b)(8) and (9) (Resting orders that are repriced and become marketable against contra-side orders on order book will trade consistent with their ranking, and resting orders on both sides of market that reprice and become marketable against one another will trade consistent with their ranking).

[55] *See* Cboe BZX Rule 11.9(g)(2)(D) (a displayed post only order subject to display-price sliding that can remove displayed liquidity from the exchange's order book will execute if the execution value (including fees/rebates) equals or exceeds the execution value of the post only order providing liquidity); *see also* Cboe BZX Rule 11.9(c)(6) (describing the circumstances in which a post only order becomes the remover of liquidity). MEMX, MIAX Pearl, and Nasdaq all offer similar functionality in which a post only order subject to price sliding can become the remover of liquidity when the execution results in at least as much price improvement as the if the post only order remained a liquidity provider. *See* MEMX Rule 11.6(j)(1)(A)(iv); MIAX Pearl Rule 2614(g)(1)(D); Nasdaq Rule 4702(b)(4)(A).

[56] *See* IEX Rule 11.220.

[57] *See supra* note 54.

[58] *See* IEX Rule 11.230(a)(4)(D).

[59] *See, e.g.,* NYSE Rule 7.31(d)(3)(B) (when two midpoint liquidity orders match, the order with the newer timestamp is the liquidity-removing order).

subject to the thirty (30) day operative delay. The Exchange anticipates implementing the rule change within ninety (90) days of the effective date and will provide at least ten (10) days' notice to Members and market participants of the implementation timeline.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[60] in general, and furthers the objectives of Section 6(b)(5),[61] 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, and 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. Specifically, the Exchange believes that providing for displayed odd lot orders is consistent with the protection of investors and the public interest because it is designed to incentivize the entry of additional displayed limit orders on IEX by providing the opportunity for odd lot orders to receive displayed order execution priority and visibility, thereby enhancing price discovery and the overall liquidity profile on the Exchange to the benefit of all market participants.

The Exchange further believes that treating displayed odd lot orders in the same manner as it treats displayed round or mixed lot orders (with the exception that non-aggregated displayed odd lots cannot form a Protected Quotation) is consistent with the Act because such treatment is designed to remove impediments to and perfect the mechanism of a free and open market and national market system by standardizing the treatment of all displayed liquidity on the Exchange, and as discussed in the Purpose section, conforming IEX's treatment of odd lots with those of the other equities exchanges.

Additionally, the Exchange believes that making displayed odd lot orders eligible to aggregate to form Protected Quotations is consistent with the protection of investors and the public interest because such functionality is designed to increase displayed liquidity on IEX. Specifically, the proposed rule change will enable odd lots priced at the Protected NBBO to increase the size of the Protected NBBO and enable odd lots priced more aggressively then the Protected NBBO to narrow the Protected NBBO (if they can be aggregated to at least one round lot), thereby contributing to the public price discovery process and offering potential price improvement opportunities to market participants that might otherwise be unaware of such better priced interest.

Furthermore, the Exchange believes that allowing odd lots to aggregate to form a quotation and be eligible to be the Exchange's Protected Quotation is consistent with the Act because such functionality is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by providing market participants greater visibility into liquidity available on the Exchange via the SIPs and IEX's Data Feeds.

In addition, since this proposed rule change would make IEX's treatment of odd lot orders consistent with that of the other equities exchanges,[62] IEX believes that it will promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in facilitating securities transactions because market participants will no longer have to potentially adjust their order routing strategies or trading algorithms to reflect that odd lots are never displayed on IEX, and will be readily able to accommodate the dissemination of displayed odd lots on IEX's Depth of Book Data Feeds. Moreover, IEX does not believe that these proposed changes raise any new or novel issues not already considered by the Commission since other equities exchanges have substantially similar rules.

Furthermore, as discussed in the Purpose section, IEX believes that the proposed revisions to the non-displayed price sliding rules and the execution rules for displayed orders subject to price sliding are consistent with the protection of investors and the public interest because they are designed to avoid an unprotected odd lot order resulting in a locked or crossed market in a manner that would be reasonably expected based on current IEX rules and design, consistent with the rules of several other equities exchanges, and designed to avoid unnecessary complexity.

Specifically, the Exchange believes that the proposed changes to IEX's non-displayed price sliding rules are consistent with the Act because such changes would prevent the unlikely, but possible, situation in which an unprotected odd lot order priced equal to or more aggressively than the Midpoint Price would result in a cross of IEX's Order Book because the displayed odd lot is unable to match with a non-displayed order priced at or more aggressively than the Midpoint Price because of the non-displayed order's specific conditions. These proposed changes are also designed to protect against a D-Peg or C-Peg order exercising discretion to the point that it executes at a price that locks or crosses the price of a contra-side displayed odd lot. The Exchange notes that these changes are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by protecting market participants from having their non-displayed orders be inadvertently crossed by an unprotected displayed odd lot. This proposed change is also consistent with Regulation NMS's goals of avoiding crossed markets.

Similarly, the Exchange believes that the proposed change to IEX's execution rules to allow displayed orders previously subject to price sliding to match with liquidity provided by a contra-side unprotected displayed odd lot order that the re-pricing order would otherwise lock or cross are consistent with the Act because the proposed rule change is designed to protect investors and the public interest by facilitating the execution of marketable orders that would otherwise be blocked from executing by the price sliding rules in order to prevent the market from becoming locked or crossed, while increasing price improvement opportunities (by allowing the orders to execute at prices more aggressive than the Protected NBBO). Furthermore, as discussed in the Purpose section, this proposed change is consistent with investor expectations and will minimize the unnecessary complexity that would result from requiring an unprotected displayed odd lot order priced more aggressively than the Protected NBBO to force a marketable contra-side displayed order to continually re-price to avoid locking or crossing the contra-side displayed odd lot order.

Moreover, as noted in the Purpose section, other exchanges have adopted similar mechanisms to prevent displayed odd lot orders from resulting in a locked or crossed market (both for non-displayed and displayed orders). Therefore, the Exchange believes that these aspects of the proposed rule change also do not raise any material new or novel issues not previously considered by the Commission.

[60] 15 U.S.C. 78f(b).

[61] 15 U.S.C. 78f(b)(5).

[62] *See supra* notes 25 and 26.

Additionally, IEX believes that the proposed conforming changes to IEX Rules 11.190(b)(10) and (16) and 11.240(c)(1) further the purposes of the Act because they provide greater clarity and consistency to the IEX Rule Book thereby reducing the potential for confusion of any market participants. Specifically, the proposed conforming changes to IEX Rules 11.190(b)(10) and (16) will prevent any confusion to market participants about how D-Peg and C-Peg orders' discretionary prices would be impacted by the presence of a contra-side non-displayed order with specific conditions that prevented the otherwise marketable orders from matching. Similarly, the proposed conforming change to IEX Rule 11.240(c)(1) will make clear to market participants that the same priority rules apply to determining both the best-ranked order to buy and the best-ranked order to sell, and to reduce any possible confusion that could arise from the mention of how IEX connects to the SIPs, when all connectivity is addressed in great detail in IEX Rule 11.510.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance IEX's competitiveness with other markets by adopting rules providing for displayed odd lots that are comparable to those in place at other equities exchanges. As discussed in the Purpose section, the proposal is designed to incentivize the entry of additional displayed limit orders on IEX by providing the opportunity for odd lot orders to receive displayed order execution priority and visibility, thereby enhancing price discovery, and increasing the overall displayed liquidity profile on the Exchange to the benefit of all market participants.

IEX's proposed approach to prevent the potential occurrence of an unprotected displayed odd lot order locking or crossing IEX's Order Book is based upon the approaches of other equities exchanges that are designed to mitigate the same issue in a manner consistent with each exchange's particular technical design and functionality. IEX's proposed rule changes are designed to function in reasonably predictable ways consistent with the expectations of market participants and competing equities exchanges that may route odd lot orders to the Exchange. To the extent there are minor differences in IEX's proposed approach to address the potential that an unprotected displayed odd lot order could result in a locked or crossed market, the differences are not based on competitive considerations but rather simply to provide for reasonably predictable outcomes in a manner consistent with IEX's system design.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition because it will apply to all Members in the same manner. All Members are eligible to enter displayed odd lot orders and all Members may continue to use non-displayed odd lot orders. Moreover, the proposal would provide potential benefits to all Members to the extent that there is more liquidity available on IEX as a result of the ability to enter displayed odd lot orders. As discussed above, the proposal is intended to incentivize the entry of additional odd lot orders, which would provide additional available liquidity to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)[63] of the Act and Rule 19b–4(f)(6)[64] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b–4[65] because it is consistent with the protection of investors and the public interest because it is designed to incentivize the entry of additional displayed limit orders on IEX by providing the opportunity for odd lot orders to receive displayed order execution priority and visibility, thereby enhancing price discovery and the overall liquidity profile on the Exchange to the benefit of all market participants, as discussed in the Purpose, Statutory Basis, and Burden on Competition sections. Further, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it would standardize the treatment of all displayed liquidity on the Exchange, and as discussed in the Purpose and Statutory Basis sections, substantially conform IEX's treatment of odd lots with those of the other equities exchanges in a manner consistent with the existing IEX rules and investor expectations.

IEX also does not believe that the proposed changes raise any new or novel material issues that have not already been considered by the Commission because it would substantially conform IEX's treatment of odd lot orders to the manner in which such orders are treated by other equities exchanges, as discussed in the Purpose and Statutory Basis sections. Specifically, the manner in which IEX proposes to allow odd lot orders to be displayed and aggregated to form a protected quote is substantially similar to the functionality of the other equities exchanges.[66] Similarly, IEX's proposed approach to prevent a displayed odd lot order from locking or crossing a non-displayed contra-side order that has a specific condition that prevent the orders from matching is consistent with Nasdaq and NYSE rules,[67] and also similar to the rules of the Cboe BZX, MEMX, and MIAX Pearl exchanges.[68] Finally, the manner in which IEX will match one or more displayed odd lot orders that become executable against a contra-side displayed order as a result of a re-pricing triggered by market changes is consistent with the approaches taken by several other exchanges that match resting orders that re-price to a point of marketability.[69] Accordingly, the Exchange does not believe that the proposed approaches raise any new or novel issues not previously considered by the Commission.

Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)

[63] 15 U.S.C. 78s(b)(3)(A).

[64] 17 CFR 240.19b–4(f)(6).

[65] 17 CFR 240.19b–4(f)(6).

[66] *See supra* notes 25 and 26.

[67] *See supra* notes 46 and 47.

[68] *See supra* note 48.

[69] *See supra* notes 54 and 55.

of the Act[70] and paragraph (f)(6) of Rule 19b–4 thereunder.[71] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[72] of the Act 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–IEX–2021–01 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–IEX–2021–01. 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 offices 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–IEX–2021–01, and should be submitted on or before February 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[73]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01402 Filed 1–21–21; 8:45 am]

BILLING CODE 8011–01–P

[70] 15 U.S.C. 78s(b)(3)(A).

[71] 17 CFR 240.19b–4.

[72] 15 U.S.C. 78s(b)(2)(B).

[73] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90932/January 15, 2021]

Order Making Fiscal Year 2021 Annual Adjustments to Transaction Fee Rates

I. Background

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities (''covered sales'') transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of covered sales transacted by or through any member of the association other than on an exchange.[3]

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate.[4] Specifically, the Commission must adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.[5]

The Commission is required to publish notice of the new fee rates under Section 31 not later than 30 days after the date on which an Act making a regular appropriation for the applicable fiscal year is enacted.[6] On December 27, 2020, the President signed into law the Consolidated Appropriations Act, 2021, which includes total appropriations of $1,926,162,000 to the SEC for fiscal year 2021.

II. Fiscal Year 2021 Annual Adjustment to the Fee Rate

The new fee rate is determined by (1) subtracting the sum of fees estimated to be collected prior to the effective date of the new fee rate[7] and estimated assessments on security futures transactions to be collected under Section 31(d) of the Exchange Act for all of fiscal year 2021[8] from an amount equal to the regular appropriation to the Commission for fiscal year 2021, and (2) dividing by the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.[9]

As noted above, the Consolidated Appropriations Act, 2021, includes total appropriations of $1,926,162,000 to the Commission for fiscal year 2021.[10] The

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] In some circumstances, the SEC also must make a mid-year adjustment to the fee rates applicable under Sections 31(b) and (c).

[5] 15 U.S.C. 78ee(j)(1) (the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.'').

[6] 15 U.S.C. 78ee(g).

[7] The sum of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of covered sales prior to the effective date of the new fee rate. The exchanges and FINRA have provided data on the dollar amount of covered sales through November, 2020. To calculate the dollar amount of covered sales from December, 2020 to the effective date of the new fee rate, the Commission is using the same methodology it used in fiscal year 2020. This methodology is described in Appendix A of this order.

[8] OneChicago, LLC, the only reporting entity for single stock futures, ceased operations in September, 2020; its last R–31 report was filed in October, 2020. Accordingly, the forecast for the assessments for all of fiscal year 2021 for single stock futures is the reported assessments on single stock futures from September, 2020 by OneChicago, LLC.

[9] To estimate the aggregate dollar amount of covered sales for the remainder of fiscal year 2021 following the effective date of the new fee rate, the Commission is using the same methodology it used previously. This methodology is described in Appendix A of this order.

[10] The President signed into law the ''Consolidated Appropriations Act, 2021'' on December 27, 2020. This legislation included an

Commission estimates that it will collect $1,514,646,590 in fees for the period prior to the effective date of the new fee rate and $494 in assessments on round turn transactions in security futures products during all of fiscal year 2021. Using the methodology described in Appendix A, the Commission estimates that the aggregate dollar amount of covered sales for the remainder of fiscal year 2021 to be $81,081,356,203,186.

The uniform adjusted rate is computed by dividing the residual fees to be collected of $411,514,917 by the estimated aggregate dollar amount of covered sales for the remainder of fiscal year 2021 of $81,081,356,203,186; this results in a uniform adjusted rate for fiscal year 2021 of $5.10 per million.[11]

III. Effective Date of the Uniform Adjusted Rate

Under Section 31(j)(4)(A) of the Exchange Act, the fiscal year 2021 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2020, or 60 days after the date on which a regular appropriation to the Commission for fiscal year 2021 is enacted.[12] The regular appropriation to the Commission for fiscal year 2021 was enacted on December 27, 2020, and accordingly, the new fee rates applicable under Sections 31(b) and (c) of the Exchange Act will take effect on February 25, 2021.

IV. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,

It is hereby ordered that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $5.10 per $1,000,000 effective on February 25, 2021.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

Appendix A

This appendix provides the methodology for determining the annual adjustment to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act for fiscal year 2021. Section 31 of the Exchange Act requires the fee rates to be adjusted so that it is reasonably likely that the Commission will collect aggregate fees equal to its regular appropriation for fiscal year 2021.

To make the adjustment, the Commission must project the aggregate dollar amount of covered sales of securities on the securities exchanges and certain over-the-counter (''OTC'') markets over the course of the year. The fee rate equals the ratio of the Commission's regular appropriation for fiscal year 2021 (less the sum of fees to be collected during fiscal year 2021 prior to the effective date of the new fee rate and aggregate assessments on security futures transactions during all of fiscal year 2021) to the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.

For 2021, the Commission has estimated the aggregate dollar amount of covered sales by projecting forward the trend established in the previous decade. More specifically, the dollar amount of covered sales was forecasted for months subsequent to November 2020, the last month for which the Commission has data on the dollar volume of covered sales.[13]

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Dollar Amount of Covered Sales for Fiscal Year 2021

First, calculate the average daily dollar amount of covered sales (''ADS'') for each month in the sample (February 2010–November 2020). The monthly total dollar amount of covered sales (exchange plus certain OTC markets) is presented in column C of Table A.

The model forecasts the monthly moving average of the average daily dollar amount of covered sales. Each month's average daily dollar amount of covered sales is calculated by dividing the total covered sales for that month (column C of Table A) by the number of trading days for that month (column B of Table A). These amounts are shown in column D of Table A. The moving average will span the same number of months required to be forecast for the remainder of the fiscal year. The trailing moving average used in the forecast model is presented in column E of Table A.

To capture the recent trends in the monthly changes in the moving averages, calculate the 1-month and 2-month lags of the trailing moving average shown in column E in Table A. These amounts are shown in columns F and G, respectively, of Table A.

Next, model the monthly trailing moving average of ADS as function of a constant term and the two lagged trailing moving averages using the ordinary least squares technique.

Use the estimated model to forecast the trailing moving average of ADS of the first month after the last available monthly data. Estimate the trailing moving average of the second month using the forecasted value of the first month and the actual value of the month before that. Similarly, estimate the trailing moving average of the third month using the forecasted values of the two previous months. Continue in this fashion until the end of the fiscal year.

The estimate of the trailing moving average ADS for the last applicable month in the fiscal year is a prediction of the moving average for those months that need to be predicted. This estimate is used as the predicted value of ADS for each month in the forecast period; to obtain the forecast total covered sales for each month, multiply the predicted ADS by the number of days in each month.

The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for total dollar volume of covered sales (column C). The sample spans ten years, from February 2010–November 2020.[14] Divide each month's total dollar volume by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month *t,* calculate the 9-month trailing moving average of ADS (shown in column E). For example, the value for October, 2011 is the average of the 9 months ending in October, 2011, or February 2011 through October 2011 inclusive.

3. Calculate the 1-month and 2-month lags of the trailing moving average. For example, the 1-month lag of the 9-month trailing moving average for October, 2011 is equal to the 9-month trailing moving average for September, 2011. The 2-month lag of the 9-month trailing moving average for October, 2011 is equal to the 9-month trailing moving average for August 2011. These are shown in columns F and G.

4. Estimate the model using ordinary least squares:

$$y_t = \alpha + \beta_1 y_{t-1} + \beta_2 y_{t-2} + u_t$$

Where y_t is the 9-month trailing moving average of the average daily sales for month t, and y_{t-1} and y_{t-2} are the 1-month and 2-month lags of y_t, and u_t representing the error term for month t. The model can be estimated using standard commercially available

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appropriation of $1,894,835,000 to the SEC for fiscal year 2021 operations. The Act further directed that ''[i]n addition to the foregoing appropriation, for move, replication, and related costs associated with a replacement lease for the Commission's District of Columbia headquarters, not to exceed $18,650,000, to remain available until expended; and for move, replication, and related costs associated with a replacement lease for the Commission's San Francisco Regional Office facilities, not to exceed $12,677,000, to remain available until expended.'' The sum of these three amounts is $1,926,162,000. Finally, the Act further directed that ''for purposes of calculating the fee rate under section 31(j) . . . all amounts appropriated under this heading shall be deemed to be the regular appropriation to the Commission for fiscal year 2021.''

[11] Appendix A shows the process of calculating the fiscal year 2021 annual adjustment and includes the data used by the Commission in making this adjustment.

[12] 15 U.S.C. 78ee(j)(4)(A).

[13] To determine the availability of data, the Commission compares the date of the appropriation with the date the transaction data are due from the exchanges (10 business days after the end of the month). If the business day following the date of the appropriation is equal to or subsequent to the date the data are due from the exchanges, the Commission uses these data. The appropriation was signed on December 27, 2020. The first business day after this date was December 28, 2020. Data for November 2020 were due from the exchanges on December 14, 2020. As a result, the Commission used November 2020 and earlier data to forecast volume for December 2020 and later months.

[14] Because the model uses a two period lag in the 9-month trailing moving average of average daily covered sales, ten additional months of data are added to the table so that the model is estimated with 120 observations.

software. The estimated parameter values are $a = -3{,}106{,}716{,}928$, $b_1 = +1.574199$, $b_2 = -0.560507$. The root-mean squared error (RMSE) of the regression is 6,022,194,076.

5. The predicted value of the 9-month trailing moving average of the last month to be forecast represents the final forecast of covered sales for the entire prediction period. This value is shown in column H. This represents the prediction for August of 2021. To calculate this value from the model above, one needs the 1-month and 2-month lag of the 9-month trailing moving average ADS, *i.e.,* the 9-month trailing moving average for June and July. The 9-month trailing moving average for July is obtained by using the 1-month and 2-month lags for July, that is, the 9-month trailing moving averages for June and May. To arrive at all the necessary inputs, one begins with the first month to be forecast, in this case, December 2020, and iterates predictions forward until the last month is predicted. One then multiplies the final predicted 9-month trailing moving average ADS by the number of days in each month to arrive at the forecast total dollar amount of covered sales. This is shown in column I.

6. For example, for December 2020, using the a, b_1, and b_2 parameter estimates shown above, along with the 1-month and two-month lags in the 9-month trailing moving average ADS (representing the 9-month trailing moving average ADS for November and October 2020, respectively), one can estimate the forecast 9-month trailing moving average ADS for December: $-3{,}106{,}716{,}928 + (1.574199 \times 527{,}000{,}127{,}996) + (-0.560507 \times 518{,}017{,}127{,}996) = 536{,}143{,}950{,}634$.

7. With the estimated 9-month trailing moving average ADS for December 2020 calculated above, one can estimate the 9-month trailing moving average ADS for January, 2021. The estimate obtained from December becomes the 1-month lag for January, and the 1-month lag used in the December forecast becomes the 2-month lag for the January forecast. Thus, the predicted 9-month trailing moving average ADS for January 2021 is calculated as: $-3{,}106{,}716{,}928 + (1.574199 \times 536{,}143{,}950{,}634) + (-0.560507 \times 527{,}000{,}127{,}996) = 545{,}503{,}592{,}273$.

8. Using the forecasts for December and January, one can estimate the value for February. Repeat this procedure for subsequent months, until the estimate for August 2021 is obtained. This value is 618,941,650,406.[15] This value is then used to calculate the final forecast total monthly covered sales for all 9 months from December 2020 through August 2021.

9. To obtain the estimate of total monthly covered sales for each month, multiply the number of trading days in the month, shown in column B in Table A, by the final forecast 9-month trailing moving average ADS, shown in column H of Table A. This product is shown in column I of Table A, and these figures are used to calculate the new fee rate.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Use Table A to estimate fees collected for the period September 1, 2020 through February 24, 2021. The projected aggregate dollar amount of covered sales for this period is $68,536,044,778,746. Actual and projected fee collections at the current fee rate of $22.10 per million are $1,514,646,590.

2. Estimate the amount of assessments on security futures products collected from September 1, 2020 through August 31, 2021. The only entity reporting assessable security futures products ceased operations in September, 2020.[16] Consequently, the estimated amount of assessments on security futures products collected from September 2020 through August 2021 is equal to the amount already reported, which is $493.87.

3. Subtract the amounts $1,514,646,590 and $493.87 from the target off-setting collection amount set by Congress of $1,926,162,000, leaving $411,514,917 to be collected on dollar volume for the period February 25, 2021 through August 31, 2021.

4. Use Table A to estimate dollar volume for the period February 25, 2021 through August 31, 2021. The estimate is $81,081,356,203,186. Finally, compute the fee rate required to produce the additional $411,514,917 in revenue. This rate is $411,514,917 divided by $81,081,356,203,186 or 0.00000507533.

5. Round the result to the seventh decimal point, yielding a rate of 0.0000051 (or $5.10 per million).

This table summarizes the estimates of the aggregate dollar amount of covered sales, by time period. The figures in this table can be used to determine the new fee rate.

TABLE A—BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES

Fee rate calculation	
a. Baseline estimate of the aggregate dollar amount of sales, 09/01/2020 to 01/31/2021 ($Millions)	$58,014,037
b. Baseline estimate of the aggregate dollar amount of sales, 02/01/2021 to 02/24/2021 ($Millions)	10,522,008
c. Baseline estimate of the aggregate dollar amount of sales, 02/25/2021 to 02/28/2021 ($Millions)	1,237,883
d. Baseline estimate of the aggregate dollar amount of sales, 03/01/2021 to 08/31/2021 ($Millions)	79,843,473
e. Estimated collections in assessments on security futures products in fiscal year 2021 ($Millions)	0.026
f. Implied fee rate (($1,926,162,000 − $22.10*(a + b) − e)/(c + d)	5.0

Month	Number of trading days in month	Total dollar amount of sales	Average daily dollar amount of sales (ADS)	9-Month trailing moving average ADS	1 Month lag of 9-month trailing moving average ADS	2 Month lag of 9-month trailing moving average ADS	Forecast 9-month trailing moving average ADS	Forecast total dollar amount of sales
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Feb-10	19	$4,969,848,578,023	$261,570,977,791					
Mar-10	23	5,563,529,823,621	241,892,601,027					
Apr-10	21	5,546,445,874,917	264,116,470,234					
May-10	20	7,260,430,376,294	363,021,518,815					
Jun-10	22	6,124,776,349,285	278,398,924,967					
Jul-10	21	5,058,242,097,334	240,868,671,302					
Aug-10	22	4,765,828,263,463	216,628,557,430					
Sep-10	21	4,640,722,344,586	220,986,778,314					
Oct-10	21	5,138,411,712,272	244,686,272,013	$259,130,085,766				
Nov-10	21	5,279,700,881,901	251,414,327,710	258,001,569,090	$259,130,085,766			
Dec-10	22	4,998,574,681,208	227,207,940,055	256,369,940,093	258,001,569,090	$259,130,085,766		
Jan-11	20	5,043,391,121,345	252,169,556,067	255,042,505,186	256,369,940,093	258,001,569,090		
Feb-11	19	5,114,631,590,581	269,191,136,346	244,616,907,134	255,042,505,186	256,369,940,093		
Mar-11	23	6,499,355,385,307	282,580,668,926	245,081,545,351	244,616,907,134	255,042,505,186		
Apr-11	20	4,975,954,868,765	248,797,743,438	245,962,553,367	245,081,545,351	244,616,907,134		
May-11	21	5,717,905,621,053	272,281,220,050	252,146,182,547	245,962,553,367	245,081,545,351		
Jun-11	22	5,820,079,494,414	264,549,067,928	256,986,436,948	252,146,182,547	245,962,553,367		
Jul-11	20	5,189,681,899,635	259,484,094,982	258,630,639,500	256,986,436,948	252,146,182,547		
Aug-11	23	8,720,566,877,109	379,155,081,613	272,824,056,601	258,630,639,500	256,986,436,948		
Sep-11	21	6,343,578,147,811	302,075,149,896	281,142,635,472	272,824,056,601	258,630,639,500		
Oct-11	21	6,163,272,963,688	293,489,188,747	285,733,705,770	281,142,635,472	272,824,056,601		
Nov-11	21	5,493,906,473,584	261,614,593,980	284,891,867,729	285,733,705,770	281,142,635,472		
Dec-11	21	5,017,867,255,600	238,946,059,790	280,043,577,825	284,891,867,729	285,733,705,770		
Jan-12	20	4,726,522,206,487	236,326,110,324	278,657,840,812	280,043,577,825	284,891,867,729		
Feb-12	20	5,011,862,514,132	250,593,125,707	276,248,052,552	278,657,840,812	280,043,577,825		
Mar-12	22	5,638,847,967,025	256,311,271,228	275,332,741,808	276,248,052,552	278,657,840,812		

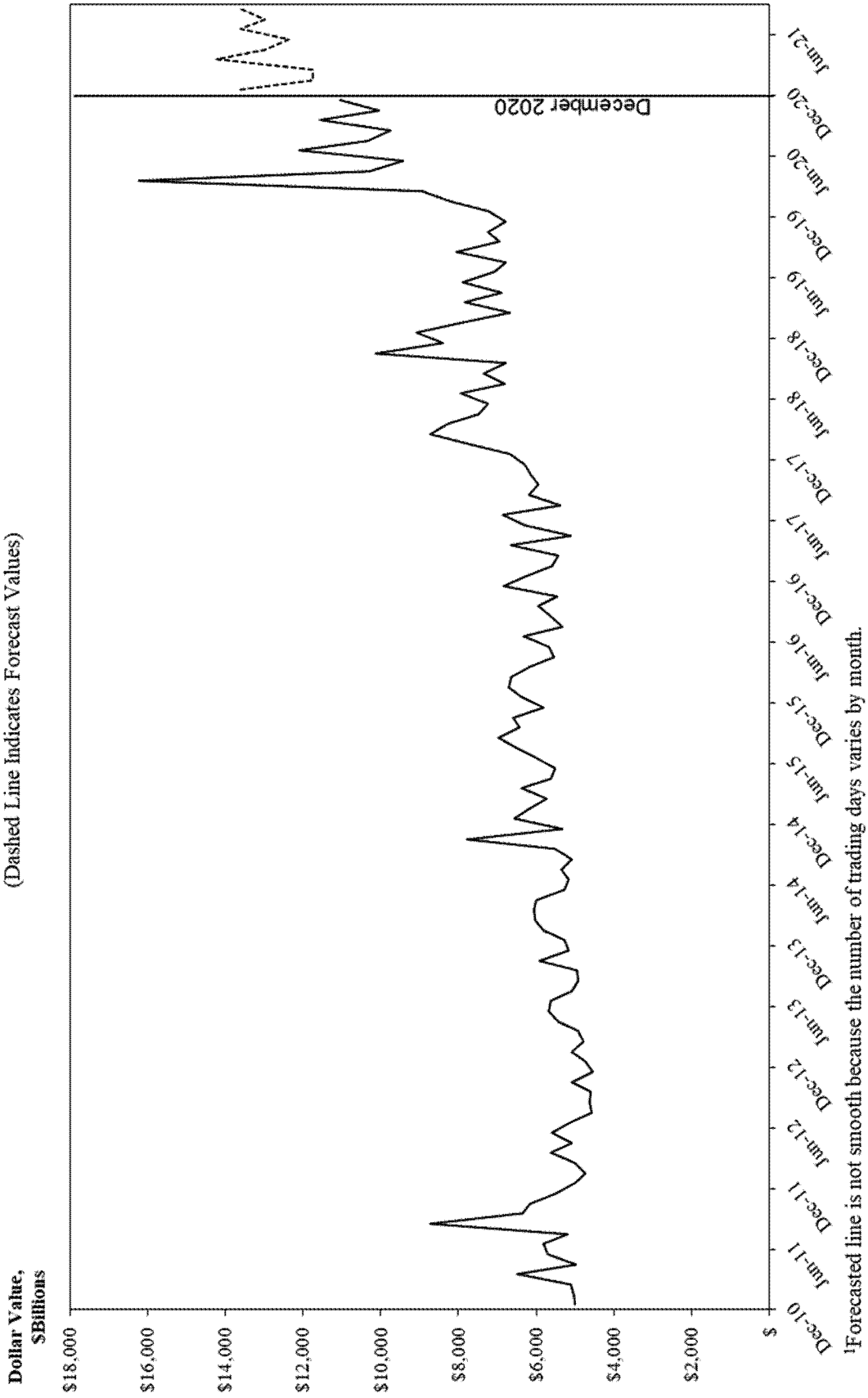
[15] One obtains insignificantly different values using the rounded parameter estimates shown above. The predicted ADS values displayed above represents the full precision estimate.

[16] OneChicago, LLC, the only reporting entity for single stock futures, ceased operations in September, 2020; its last R–31 report was filed in October, 2020. Accordingly, the forecast for the assessments for all of fiscal year 2021 for single stock futures is the reported assessments on single stock futures from September, 2020 by OneChicago, LLC.

Month	Number of trading days in month	Total dollar amount of sales	Average daily dollar amount of sales (ADS)	9-Month trailing moving average ADS	1 Month lag of 9-month trailing moving average ADS	2 Month lag of 9-month trailing moving average ADS	Forecast 9-month trailing moving average ADS	Forecast total dollar amount of sales
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Apr-12	20	5,084,239,396,560	254,211,969,828	274,746,950,124	275,332,741,808	276,248,052,552		
May-12	22	5,611,638,053,374	255,074,456,972	260,960,214,052	274,746,950,124	275,332,741,808		
Jun-12	21	5,121,896,896,362	243,899,852,208	254,496,292,087	260,960,214,052	274,746,950,124		
Jul-12	21	4,567,519,314,374	217,500,919,732	246,053,151,085	254,496,292,087	260,960,214,052		
Aug-12	23	4,621,597,884,730	200,939,038,467	239,311,422,695	246,053,151,085	254,496,292,087		
Sep-12	19	4,598,499,962,682	242,026,313,825	239,653,673,143	239,311,422,695	246,053,151,085		
Oct-12	21	5,095,175,588,310	242,627,408,967	240,353,817,437	239,653,673,143	239,311,422,695		
Nov-12	21	4,547,882,974,292	216,565,855,919	236,573,009,683	240,353,817,437	239,653,673,143		
Dec-12	20	4,744,922,754,360	237,246,137,718	234,454,661,515	236,573,009,683	240,353,817,437		
Jan-13	21	5,079,603,817,496	241,885,896,071	233,085,097,764	234,454,661,515	236,573,009,683		
Feb-13	19	4,800,663,527,089	252,666,501,426	232,817,547,148	233,085,097,764	234,454,661,515		
Mar-13	20	4,917,701,839,870	245,885,091,993	233,038,129,346	232,817,547,148	233,085,097,764		
Apr-13	22	5,451,358,637,079	247,789,028,958	236,403,474,816	233,038,129,346	232,817,547,148		
May-13	22	5,681,788,831,869	258,263,128,721	242,772,818,178	236,403,474,816	233,038,129,346		
Jun-13	20	5,623,545,462,226	281,177,273,111	247,122,924,765	242,772,818,178	236,403,474,816		
Jul-13	22	5,083,861,509,754	231,084,614,080	245,840,392,000	247,122,924,765	242,772,818,178		
Aug-13	22	4,925,611,193,095	223,891,417,868	246,654,343,327	245,840,392,000	247,122,924,765		
Sep-13	20	4,959,197,626,713	247,959,881,336	247,844,759,285	246,654,343,327	245,840,392,000		
Oct-13	23	5,928,804,028,970	257,774,088,216	249,610,113,968	247,844,759,285	246,654,343,327		
Nov-13	20	5,182,024,612,049	259,101,230,602	250,325,083,876	249,610,113,968	247,844,759,285		
Dec-13	21	5,265,282,994,173	250,727,761,627	250,863,158,280	250,325,083,876	249,610,113,968		
Jan-14	21	5,808,700,114,288	276,604,767,347	254,064,906,990	250,863,158,280	250,325,083,876		
Feb-14	19	6,018,926,931,054	316,785,627,950	260,567,406,904	254,064,906,990	250,863,158,280		
Mar-14	21	6,068,617,342,988	288,981,778,238	261,434,574,140	260,567,406,904	254,064,906,990		
Apr-14	21	6,013,948,953,528	286,378,521,597	267,578,341,642	261,434,574,140	260,567,406,904		
May-14	21	5,265,594,447,318	250,742,592,729	270,561,805,516	267,578,341,642	261,434,574,140		
Jun-14	21	5,159,506,989,669	245,690,809,032	270,309,686,371	270,561,805,516	267,578,341,642		
Jul-14	22	5,364,099,567,460	243,822,707,612	268,759,532,970	270,309,686,371	270,561,805,516		
Aug-14	21	5,075,332,147,677	241,682,483,223	266,824,116,595	268,759,532,970	270,309,686,371		
Sep-14	21	5,507,943,363,243	262,283,017,297	268,108,033,892	266,824,116,595	268,759,532,970		
Oct-14	23	7,796,638,035,879	338,984,262,430	275,039,088,901	268,108,033,892	266,824,116,595		
Nov-14	19	5,340,847,027,697	281,097,211,984	271,073,709,349	275,039,088,901	268,108,033,892		
Dec-14	22	6,559,110,068,128	298,141,366,733	272,091,441,404	271,073,709,349	275,039,088,901		
Jan-15	20	6,185,619,541,044	309,280,977,052	274,636,158,677	272,091,441,404	271,073,709,349		
Feb-15	19	5,723,523,235,641	301,238,065,034	280,246,766,711	274,636,158,677	272,091,441,404		
Mar-15	22	6,395,046,297,249	290,683,922,602	285,246,001,552	280,246,766,711	274,636,158,677		
Apr-15	21	5,625,548,298,004	267,883,252,286	287,919,395,405	285,246,001,552	280,246,766,711		
May-15	20	5,521,351,972,386	276,067,598,619	291,739,963,782	287,919,395,405	285,246,001,552		
Jun-15	22	6,005,521,460,806	272,978,248,218	292,928,322,773	291,739,963,782	287,919,395,405		
Jul-15	22	6,493,670,315,390	295,166,832,518	288,059,719,450	292,928,322,773	291,739,963,782		
Aug-15	21	6,963,901,249,270	331,614,345,203	293,672,734,252	288,059,719,450	292,928,322,773		
Sep-15	21	6,434,496,770,897	306,404,608,138	294,590,872,186	293,672,734,252	288,059,719,450		
Oct-15	22	6,592,594,708,082	299,663,395,822	293,522,252,049	294,590,872,186	293,672,734,252		
Nov-15	20	5,822,824,015,945	291,141,200,797	292,400,378,245	293,522,252,049	294,590,872,186		
Dec-15	22	6,384,337,478,801	290,197,158,127	292,346,293,303	292,400,378,245	293,522,252,049		
Jan-16	19	6,696,059,796,055	352,424,199,792	301,739,731,915	292,346,293,303	292,400,378,245		
Feb-16	20	6,659,878,908,747	332,993,945,437	308,064,881,562	301,739,731,915	292,346,293,303		
Mar-16	22	6,161,943,754,542	280,088,352,479	308,854,893,146	308,064,881,562	301,739,731,915		
Apr-16	21	5,541,076,988,322	263,860,808,968	305,376,446,085	308,854,893,146	308,064,881,562		
May-16	21	5,693,520,415,112	271,120,019,767	298,654,854,370	305,376,446,085	308,854,893,146		
Jun-16	22	6,317,212,852,759	287,146,038,762	296,515,013,328	298,654,854,370	305,376,446,085		
Jul-16	20	5,331,797,261,269	266,589,863,063	292,840,176,355	296,515,013,328	298,654,854,370		
Aug-16	23	5,635,976,607,786	245,042,461,208	287,718,094,178	292,840,176,355	296,515,013,328		
Sep-16	21	5,942,072,286,976	282,955,823,189	286,913,501,407	287,718,094,178	292,840,176,355		
Oct-16	21	5,460,906,573,682	260,043,170,175	276,648,942,561	286,913,501,407	287,718,094,178		
Nov-16	21	6,845,287,809,886	325,966,086,185	275,868,069,311	276,648,942,561	286,913,501,407		
Dec-16	21	6,208,579,880,985	295,646,660,999	277,596,770,257	275,868,069,311	276,648,942,561		
Jan-17	20	5,598,200,907,603	279,910,045,380	279,380,018,748	277,596,770,257	275,868,069,311		
Feb-17	19	5,443,426,609,533	286,496,137,344	281,088,476,256	279,380,018,748	277,596,770,257		
Mar-17	23	6,661,861,914,530	289,646,170,197	281,366,268,638	281,088,476,256	279,380,018,748		
Apr-17	19	5,116,714,033,499	269,300,738,605	281,667,477,031	281,366,268,638	281,088,476,256		
May-17	22	6,305,822,460,672	286,628,293,667	286,288,125,082	281,667,477,031	281,366,268,638		
Jun-17	22	6,854,993,097,601	311,590,595,346	289,469,766,433	286,288,125,082	281,667,477,031		
Jul-17	20	5,394,333,070,522	269,716,653,526	290,544,597,917	289,469,766,433	286,288,125,082		
Aug-17	23	6,206,204,906,864	269,834,995,951	284,307,810,113	290,544,597,917	289,469,766,433		
Sep-17	20	5,939,886,169,525	296,994,308,476	284,457,548,721	284,307,810,113	290,544,597,917		
Oct-17	22	6,134,529,538,894	278,842,251,768	284,338,904,987	284,457,548,721	284,307,810,113		
Nov-17	21	6,289,748,560,897	299,511,836,233	285,785,093,752	284,338,904,987	284,457,548,721		
Dec-17	20	6,672,181,323,001	333,609,066,150	290,669,859,969	285,785,093,752	284,338,904,987		
Jan-18	21	7,672,288,677,308	365,347,079,872	301,341,675,665	290,669,859,969	285,785,093,752		
Feb-18	19	8,725,420,462,639	459,232,655,928	320,519,938,139	301,341,675,665	290,669,859,969		
Mar-18	21	8,264,755,011,030	393,559,762,430	329,627,623,370	320,519,938,139	301,341,675,665		
Apr-18	21	7,490,308,402,446	356,681,352,497	339,290,367,701	329,627,623,370	320,519,938,139		
May-18	22	7,242,077,467,361	329,185,339,426	345,884,850,309	339,290,367,701	329,627,623,370		
Jun-18	21	7,936,783,802,579	377,942,085,837	354,879,047,793	345,884,850,309	339,290,367,701		
Jul-18	21	6,807,593,326,456	324,171,110,784	359,915,587,684	354,879,047,793	345,884,850,309		
Aug-18	23	7,363,115,477,823	320,135,455,558	362,207,100,942	359,915,587,684	354,879,047,793		
Sep-18	19	6,781,988,459,996	356,946,761,052	364,800,178,154	362,207,100,942	359,915,587,684		
Oct-18	23	10,133,514,482,168	440,587,586,181	373,160,234,410	364,800,178,154	362,207,100,942		
Nov-18	21	8,414,847,862,204	400,707,041,057	366,657,388,314	373,160,234,410	364,800,178,154		
Dec-18	19	9,075,221,733,736	477,643,249,144	375,999,997,948	366,657,388,314	373,160,234,410		
Jan-19	21	7,960,664,643,749	379,079,268,750	378,488,655,310	375,999,997,948	366,657,388,314		
Feb-19	19	6,676,391,653,247	351,389,034,381	380,955,732,527	378,488,655,310	375,999,997,948		
Mar-19	21	7,828,979,311,928	372,808,538,663	380,385,338,397	380,955,732,527	378,488,655,310		
Apr-19	21	6,907,923,076,080	328,948,717,909	380,916,183,633	380,385,338,397	380,955,732,527		
May-19	22	7,895,053,976,747	358,866,089,852	385,219,587,443	380,916,183,633	380,385,338,397		
Jun-19	20	7,070,583,442,058	353,529,172,103	384,839,855,338	385,219,587,443	380,916,183,633		
Jul-19	22	6,792,811,319,721	308,764,150,896	370,192,806,973	384,839,855,338	385,219,587,443		
Aug-19	22	8,059,527,400,976	366,342,154,590	366,374,486,254	370,192,806,973	384,839,855,338		
Sep-19	20	6,958,132,871,506	347,906,643,575	351,959,307,858	366,374,486,254	370,192,806,973		
Oct-19	23	7,235,982,824,882	314,607,948,908	344,795,827,875	351,959,307,858	366,374,486,254		
Nov-19	20	6,784,888,230,209	339,244,411,510	343,446,425,334	344,795,827,875	351,959,307,858		
Dec-19	21	7,252,856,724,647	345,374,129,745	340,398,157,677	343,446,425,334	344,795,827,875		
Jan-20	21	8,178,172,797,805	389,436,799,895	347,119,055,675	340,398,157,677	343,446,425,334		
Feb-20	19	8,951,554,790,521	471,134,462,659	359,593,319,320	347,119,055,675	340,398,157,677		
Mar-20	22	16,218,726,536,159	737,214,842,553	402,225,060,481	359,593,319,320	347,119,055,675		
Apr-20	21	10,289,596,902,933	489,980,804,902	422,360,244,260	402,225,060,481	359,593,319,320		
May-20	20	9,435,524,799,540	471,776,239,977	434,075,142,636	422,360,244,260	402,225,060,481		
Jun-20	22	12,093,857,552,130	549,720,797,824	456,498,937,553	434,075,142,636	422,360,244,260		
Jul-20	22	10,355,334,352,448	470,697,016,020	473,842,167,232	456,498,937,553	434,075,142,636		
Aug-20	21	9,763,364,099,611	464,922,099,981	487,806,354,840	473,842,167,232	456,498,937,553		
Sep-20	21	11,545,568,415,944	549,788,972,188	510,519,115,111	487,806,354,840	473,842,167,232		
Oct-20	22	10,052,383,756,890	456,926,534,404	518,017,974,501	510,519,115,111	487,806,354,840		
Nov-20	20	11,039,476,882,364	551,973,844,118	527,000,127,996	518,017,974,501	510,519,115,111		
Dec-20	22				527,000,127,996	518,017,974,501	$618,941,650,406	$13,616,716,308,932
Jan-21	19					527,000,127,996	618,941,650,406	11,759,891,357,714
Feb-21	19						618,941,650,406	11,759,891,357,714

Month	Number of trading days in month	Total dollar amount of sales	Average daily dollar amount of sales (ADS)	9-Month trailing moving average ADS	1 Month lag of 9-month trailing moving average ADS	2 Month lag of 9-month trailing moving average ADS	Forecast 9-month trailing moving average ADS	Forecast total dollar amount of sales
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Mar-21	23						618,941,650,406	14,235,657,959,338
Apr-21	21						618,941,650,406	12,997,774,658,526
May-21	20						618,941,650,406	12,378,833,008,120
Jun-21	22						618,941,650,406	13,616,716,308,932
Jul-21	21						618,941,650,406	12,997,774,658,526
Aug-21	22						618,941,650,406	13,616,716,308,932

Figure A.
Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



[1]Forecasted line is not smooth because the number of trading days varies by month.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90936; File No. SR–BX–2021–001]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BX Options Pricing Schedule

January 15, 2021.

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 January 4, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the BX Options Pricing Schedule at Options 7.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Today, Lead Market Makers (''LMMs'')[3] are assessed the same fees and rebates in Options 7, Section 2 as BX Options Market Makers.[4] The purpose of the proposed rule change is to amend Options 7, Section 2 to (i) increase the LMM Rebate to Add Liquidity, (ii) decrease the LMM Fee to Add Liquidity, and (iii) restructure the existing pricing schedules to add separate pricing for LMMs, which will apply in each case to LMMs in their specifically appointed options classes. As described in detail below, while the Exchange is proposing to add separate pricing for LMMs in the existing schedules, LMMs will continue to be assessed the same BX Options Market Makers fees and rebates in their specifically allocated options classes under this proposal except with respect to the proposed LMM Rebate to Add Liquidity and proposed LMM Fee to Add Liquidity. The Exchange also proposes to amend its Opening Cross[5] pricing provisions in Options 7, Section 2(2) to correct an inadvertent omission. Lastly, the Exchange proposes various technical, non-substantive changes throughout Options 7, including to update cross-cites to obsolete rules.

The proposed changes respond in part to the current competitive environment where market participants have a choice of where to direct order flow by incentivizing LMMs to increase their liquidity provision on the Exchange.

LMM Rebate To Add Liquidity

Today, as set forth in Options 7, Section 2(1), LMMs are provided the $0.10 per contract BX Options Market Maker Rebate to Add Liquidity in Penny Symbols in their specifically allocated options classes. This rebate is provided only when the LMM is contra to a Non-Customer,[6] Firm,[7] or BX Options Market Maker (including LMMs).[8]

The Exchange now proposes to increase this rebate to $0.11 per contract for LMMs only. This rebate will apply to LMMs in their specifically allocated options classes, and will have the same qualifications as the existing BX Options Market Maker rebate in that the incentive will only be provided to LMMs that are contra to Non-Customers, Firms, BX Options Market Makers, or LMMs. To effect this change, the Exchange proposes to set forth the LMM Rebate to Add Liquidity in Penny Symbols in a separate pricing column in Options 7, Section 2(1). The Exchange will also amend the rebate qualifications in note 2 of Options 7, Section 2(1) to include LMMs. As amended, note 2 will provide that the Rebate to Add Liquidity will be paid to a BX Options Market Maker or a Lead Market Maker only when the BX Options Market Maker or Lead Market Maker is contra to a Non-Customer, Firm, BX Options Market Maker, or Lead Market Maker.

LMM Fee To Add Liquidity

Today, as set forth in Options 7, Section 2(1), LMMs are charged the $0.39 per contract BX Options Market Maker Fee to Add Liquidity in Penny Symbols in their specifically allocated options classes. Pursuant to note 3 of Options 7, Section 2(1), this fee is assessed only when the LMM is contra to a Customer.[9]

The Exchange now proposes to decrease this fee to $0.38 per contract for LMMs only. This fee will apply to LMMs in their specifically allocated options classes, and will have the same qualifications as the existing BX Options Market Maker fee in that the fee only will be assessed to LMMs that are contra to Customers. To effect this change, the Exchange proposes to set forth the LMM Fee to Add Liquidity in Penny Symbols in a separate pricing column in Options 7, Section 2(1). The Exchange will also amend the fee qualifications in note 3 of Options 7, Section 2(1) to include LMMs. As amended, note 3 will provide that the Fee to Add Liquidity will be assessed to a BX Options Market Maker or a Lead

[3] The term ''Lead Market Maker'' or (''LMM'') applies to a registered BX Options Market Maker that is approved pursuant to Options 2, Section 3 to be the LMM in an options class (options classes).

[4] The term ''BX Options Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on BX Options pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

[5] *See* Options 3, Section 8.

[6] A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.

[7] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[8] *See* Options 7, Section 2(1), note 2.

[9] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(48)).

Market Maker only when the BX Options Market Maker or Lead Market Maker is contra to a Customer.

Separate LMM Pricing

The Exchange also proposes to restructure the existing pricing schedules to add separate pricing for LMMs. As noted above, while the Exchange is proposing to add separate pricing for LMMs, LMMs will continue to be assessed the same BX Options Market Makers fees and rebates in their specifically allocated options classes under this proposal except with respect to the new LMM Rebate to Add Liquidity and new LMM Fee to Add Liquidity discussed above.

To effect this change, the Exchange first proposes to amend the fees and rebates for Penny and Non-Penny Symbols in Options 7, Section 2(1) by adding a separate column for LMM pricing. In the Penny Symbol and Non-Penny Symbol Tier Schedules within Options 7, Section 2(1), the Exchange also proposes to add LMMs next to each instance of BX Options Market Maker. The Exchange will make similar changes to note 4 of Options 7, Section 2(1) to add ''or a Lead Market Maker'' after each instance of BX Options Market Maker. As amended, the pricing schedules and accompanying notes for Penny and Non-Penny Symbols will be as follows:

FEES AND REBATES

[Per executed contract]

	Customer	Lead market maker	BX options market maker	Non-customer [1]	Firm
Penny Symbols:					
Rebate to Add Liquidity	#	[2] $0.11	[2] $0.10	N/A	N/A
Fee to Add Liquidity	#	[3] 0.38	[3] 0.39	0.45	0.45
Rebate to Remove Liquidity	#	N/A	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	#	#	0.46	0.46
Non-Penny Symbols:					
Rebate to Add Liquidity	*	N/A	N/A	N/A	N/A
Fee to Add Liquidity	*	[4] 0.50/0.95	[4] 0.50/0.95	0.98	0.98
Rebate to Remove Liquidity	*	N/A	N/A	N/A	N/A
Fee to Remove Liquidity	N/A	*	*	0.89	0.89

[1] A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.

[2] The Rebate to Add Liquidity will be paid to a BX Options Market Maker or a Lead Market Maker only when the BX Options Market Maker or Lead Market Maker is contra to a Non-Customer, Firm, BX Options Market Maker, or Lead Market Maker.

[3] The Fee to Add Liquidity will be assessed to a BX Options Market Maker or a Lead Market Maker only when the BX Options Market Maker or Lead Market Maker is contra to a Customer.

[4] The higher Fee to Add Liquidity will be assessed to a BX Options Market Maker or a Lead Market Maker only when the BX Options Market Maker or Lead Market Maker is contra to a Customer.

Penny Symbols Tier Schedule

When:	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity	Fee to remove liquidity
	Customer	Customer	Customer	Lead market maker or BX options market maker	Lead market maker or BX options market maker
Trading with:	Non-customer, lead market maker, BX options market maker, or firm	Customer	Non-customer, lead market maker, BX options market maker, customer, or firm	Customer	Non-customer, lead market maker, BX options market maker, or firm
Tier 1: Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month	$0.00	$0.39	$0.00	$0.39	$0.46
Tier 2: Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month	0.10	0.39	0.25	0.39	0.46
Tier 3: Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	0.20	0.39	0.35	0.30	0.46
*** Non-Penny Symbols Tier Schedule**					
Tier 1: Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month	0.00	0.85	0.80	0.89	0.89
Tier 2: Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month	0.10	0.85	0.80	0.89	0.89

When:	Rebate to add liquidity	Fee to add liquidity	Rebate to remove liquidity	Fee to remove liquidity	Fee to remove liquidity
Trading with:	Customer	Customer	Customer	Lead market maker or BX options market maker	Lead market maker or BX options market maker
	Non-customer, lead market maker, BX options market maker, or firm	Customer	Non-customer, lead market maker, BX options market maker, customer, or firm	Customer	Non-customer, lead market maker, BX options market maker, or firm
Tier 3: Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month	0.20	0.85	0.80	0.60	0.89

As shown above, the only fee changes relate to the proposed LMM Rebate to Add Liquidity in Penny Symbols and the proposed LMM Fee to Add Liquidity in Penny Symbols. Otherwise, LMMs will continue to be charged at the same rate for Penny and Non-Penny Symbols under this proposal (*i.e.,* the same as BX Options Market Makers).

The Exchange also proposes to make similar changes in Options 7, Section 2(4) and Section 2(5) to add separate pricing for LMMs. In Section 2(4), which sets forth pricing for orders executed in the Exchange's exposure mechanism,[10] the Exchange proposes to add a separate pricing column for LMMs that will set forth the same fees and rebates that LMMs are assessed today (*i.e.,* the same as BX Options Market Makers). As amended, the pricing schedule for exposure orders in Section 2(4) will be as follows:

FEES AND REBATES

[Per executed contract]

	Customer	Lead market maker	BX options market maker	Non-customer
Penny Symbols:				
Rebate for Order triggering order exposure alert	$0.34	$0.00	$0.00	$0.00
Fee for Order responding to order exposure alert	0.39	0.39	0.39	0.45
Non-Penny Symbols				
Rebate for Order triggering order exposure alert	0.70	0.00	0.00	0.00
Fee for Order responding to order exposure alert	0.85	0.85	0.85	0.89

In Section 2(5), which sets forth pricing for orders executed in the Exchange's Price Improvement Mechanism (''PRISM''),[11] the Exchange proposes to add a separate pricing row for LMMs that will set forth the same fees and rebates that LMMs are assessed today (*i.e.,* the same as BX Options Market Makers). As amended, the pricing schedule for PRISM orders in Section 2(5) will be as follows:

FEES AND REBATES

[Per contact]

Type of market participants	Agency order	Submitted PRISM order	Responded to PRISM auction		PRISM order traded with PRISM response	
		Fee	Fee		Rebate	
		Contra-side order	Penny classes	Non-penny classes	Penny classes	Non-penny classes
Customer	$0.00	$0.00	$0.49	$0.94	$0.35	$0.70
Lead Market Maker	0.30	0.05	0.49	0.94	0.00	0.00
BX Options Market Maker	0.30	0.05	0.49	0.94	0.00	0.00
Non-Customer	0.30	0.05	0.49	0.94	0.00	0.00

Opening Cross

The Exchange proposes to amend its Opening Cross pricing provisions in Options 7, Section 2(2) to correct an inadvertent omission. Specifically, the Exchange submitted a rule filing effective on July 3, 2012 to adopt fees and rebates for BX Options, which, among other things, adopted the pricing for market participants during the Opening Cross (''2012 Filing'').[12] As discussed in the 2012 Filing, BX's

[10] *See* Options 5, Section 4.

[11] *See* Options 3, Section 13.

[12] *See* Securities Exchange Act Release No. 67339 (July 3, 2012), 77 FR 40688 (July 10, 2012) (SR–BX–2012–043).

Opening Cross pricing was intended to be similar to the Opening Cross pricing on its affiliate, The Nasdaq Options Market (''NOM''), in that BX would similarly assess a Fee to Remove Liquidity on all market participants, other than a Customer, during the Opening Cross. Indeed, NOM's Pricing Schedule specifically states that ''Broker-Dealers, Professionals, Firms, Non-NOM Market Makers and *NOM Market Makers* will be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross.'' [13] Accordingly, the 2012 Filing should have likewise reflected that BX Options Market Makers would be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross. However, the 2012 Filing inadvertently omitted these market participants in the Exhibit 5 rule text. As a result of this drafting error, the current rule in Options 7, Section 2(2) incorrectly indicates that only Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers will be assessed the Fee to Remove Liquidity during the Opening Cross. Therefore, the Exchange proposes to add that BX Options Market Makers will be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross. The Exchange notes that this change is corrective in nature and does not change any rates that are currently applied to BX Options Market Makers during the Opening Cross.

The Exchange also proposes a non-substantive change in this section to replace Professionals, Broker-Dealers, and Non-BX Options Market Makers with the term ''Non-Customers,'' which encompasses those market participant types. Finally, in light of the proposed changes to separately provide for LMM pricing throughout Options 7, Section 2 by adding LMMs next to each instance of BX Options Market Makers, the Exchange proposes to add LMMs to the Opening Cross pricing provisions in Section 2(2). As discussed above, LMMs are currently charged the same rates as BX Options Market Makers, including during the Opening Cross (*i.e.,* the Fee to Remove Liquidity), and the Exchange is not proposing to amend the current rates applied to LMMs during the Opening Cross. With the proposed changes, the last sentence of Options 7, Section 2(2) will now provide: ''Lead Market Makers, BX Options Market Makers, Non-Customers, and Firms will be assessed the Fee to Remove Liquidity during the Exchange's Opening Cross.''

[13] *See* NOM Options 7, Section 2(2) (emphasis added).

Technical Changes

The Exchange proposes a number of technical, non-substantive changes in Options 7. The Exchange first proposes to add ''Section 1 General Provisions'' at the beginning of the Pricing Schedule. The Exchange will also remove ''Section 1'' before the title ''Collection of Exchange Fees and Other Claims-BX Options'' and incorporate those provisions within the new Section 1, which will include other provisions such as the Pricing Schedule definitions. This change will assist Participants when citing to these defined terms, which currently has no section reference.

The Exchange also proposes to update obsolete rule citations within proposed Section 1 to reflect the current rules.[14] The Exchange previously relocated the Rulebook and certain cross-cites were not updated.[15]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[17] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [18]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Competing options exchanges offer similar pricing structures to that of the Exchange, including schedules of rebates and fees that differentiate between LMMs and other market participants.[20]

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

LMM Rebate To Add Liquidity

The Exchange believes that the proposed LMM Rebate to Add Liquidity in Penny Symbols is reasonable, equitable, and not unfairly discriminatory. The proposal will offer a higher $0.11 per contract rebate to qualifying LMMs in their specifically allocated options classes along the same lines as the existing $0.10 per contract BX Options Market Maker Rebate to Add Liquidity in Penny Symbols (*i.e.,* only if the order is contra to Non-Customers, Firms, BX Options Market Makers, or LMMs). The Exchange

[14] In particular, the Exchange will update obsolete cross-cites in the definitions of ''Customer,'' ''BX Options Market Maker,'' ''Lead Market Maker,'' ''Professional,'' and ''Joint Back Office.'' Similarly, the Exchange will also update the obsolete cross-cite in current Section 1 (Collection of Exchange Fees and Other Claims-BX Options).

[15] *See* Securities Exchange Act Release No. 84326 (October 1, 2018), 83 FR 50414 (October 5, 2018) (SR–BX–2018–046).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[19] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[20] *See, e.g.,* NYSE Arca Options Fees and Charges, Trade-Related Charges for Standard Options.

believes that the proposed rebate will incentivize LMMs to increase their liquidity provision on the Exchange, which will ultimately benefit all market participants through the quality of order interaction.

The Exchange further believes that the proposed differentiation between LMMs and other market participants through the higher $0.11 per contract Rebate to Add Liquidity recognizes the differing contributions made to the liquidity and trading environment on the Exchange by LMMs through their quoting obligations and their commitment of capital, unlike other market participants. In addition, LMMs are subject to heightened quoting obligations compared to BX Options Market Makers.[21] Accordingly, the Exchange believes that offering a higher rebate to LMMs is equitable and not unfairly discriminatory.

LMM Fee To Add Liquidity

The Exchange believes that the proposed LMM Fee to Add Liquidity in Penny Symbols is reasonable, equitable and not unfairly discriminatory. The proposal will assess a lower $0.38 per contract fee to LMMs in their specifically allocated options classes along the same lines as the existing $0.39 per contract BX Options Market Maker Fee to Add Liquidity in Penny Symbols (*i.e.,* only if the order is contra to Customers). The Exchange believes that the proposed fee remains competitive and will continue to attract order flow to BX to the benefit of all market participants. As described above, the proposed fee is lower than the current fee assessed to LMMs when trading against a Customer. The Exchange believes that the lower fee will incentivize LMMs to increase their liquidity provision on the Exchange, which will ultimately benefit all market participants through the quality of order interaction.

The Exchange further believes that the proposed differentiation between LMMs and other market participants through the lower $0.38 per contract Fee to Add Liquidity recognizes the differing contributions made to the liquidity and trading environment on the Exchange by LMMs through their quoting obligations and their commitment of capital, unlike other market participants. In addition, LMMs are subject to heightened quoting obligations compared to BX Options Market Makers.[22] Accordingly, the Exchange believes that offering a lower fee to LMMs is equitable and not unfairly discriminatory.

Separate LMM Pricing

The Exchange believes that its proposal to restructure the pricing schedules in Options 7, Section 2 to add separate pricing for LMMs is reasonable, equitable, and not unfairly discriminatory. While the Exchange is proposing to add separate pricing for LMMs, LMMs will continue to be assessed the same BX Options Market Makers fees and rebates in their specifically allocated options classes under this proposal except with respect to the higher LMM Rebate to Add Liquidity in Penny Symbols and lower LMM Fee to Add Liquidity in Penny Symbols, as discussed above. The Exchange believes that separately providing for LMMs throughout the pricing schedules in Options 7, Section 2 will provide greater clarity and transparency as to what fees and rebates are assessed to this type of market participant.

Opening Cross

The Exchange believes that the proposed changes to the Opening Cross pricing provisions in Options 7, Section 2(2) is reasonable, equitable, and not unfairly discriminatory as it does not change the pricing currently assessed by the Exchange during the Opening Cross, but rather corrects an inadvertent omission by the 2012 Filing to include BX Options Market Makers within Options 7, Section 2(2). As discussed above, the Exchange intended to follow the Opening Cross pricing on NOM such that BX would similarly assess a Fee to Remove Liquidity on all market participants, other than a Customer, during the Opening Cross. The Exchange believes that the proposed correction to add BX Options Market Makers will help ensure that the Pricing Schedule more accurately represents the rates assessed currently during the Opening Cross and in the manner as originally intended by the 2012 Filing, thereby avoiding any potential confusion among market participants. The Exchange again notes that this proposed change is merely corrective in nature and does not change any rates that are currently applied during the Opening Cross.

The proposed changes to add LMMs to the Opening Cross pricing provisions likewise do not change any rates that are currently applied to market participants during the Opening Cross. LMMs will continue to be assessed the same rates as BX Options Market Makers, including during the Opening Cross (*i.e.,* the Fee to Remove Liquidity). Lastly, the proposed change to replace Professionals, Broker-Dealers, and Non-BX Options Market Makers with the term ''Non-Customers,'' which encompasses those market participant types, is non-substantive in nature. Accordingly, the Exchange believes that foregoing modifications are reasonable, equitable, and not unfairly discriminatory.

Technical Changes

The Exchange believes that the proposed technical changes described above are reasonable, equitable, and not unfairly discriminatory as they are all non-substantive changes intended to promote greater clarity and transparency to the Exchange's Pricing Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of intra-market competition, the proposed pricing changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed higher LMM Rebate to Add Liquidity and lower LMM Fee to Add Liquidity will continue to incentivize LMMs to direct their order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages LMMs to send orders to the Exchange, thereby contributing to robust levels of liquidity to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe that its proposed fee change will impose any burden on intermarket competition. Furthermore, as noted above, competing options exchanges offer similar pricing structures to that of the Exchange, including schedules of rebates and fees that differentiate between LMMs and other market participants.[23]

[21] *See* Options 2, Section 4(j) (setting forth the 90% or higher quoting requirements for LMMs) and Section 5(d) (setting forth the 60% or higher quoting obligations for BX Options Market Makers).

[22] *Id.*

[23] *See supra* note 20.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–001 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–BX–2021–001. 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–BX–2021–001 and should be submitted on or before February 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01403 Filed 1–21–21; 8:45 am]

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[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90929; File No. SR–CBOE–2021–002]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Silexx Trading Platform Fees Schedule

January 14, 2021.

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 January 4, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend the Silexx trading platform (''Silexx'' or the ''platform'') Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt ''drop copy'' and order routing fees for a recently adopted Silexx platform (''Cboe Silexx''), effective January 4, 2021.

By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders,[3] and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The platform also permits users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users' choice.

an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions. Historically, users could not directly route orders through any of the then-current versions of Silexx to an exchange or trading center nor was the platform integrated into or directly connected to Cboe Option's System. In 2019, the Exchange made available an additional version of the Silexx platform, Silexx FLEX, which supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange.[4] Most recently, the Exchange made a new version of the Silexx platform available, Cboe Silexx, which supports the trading of non-FLEX Options and allows authorized Users with direct access to the Exchange.[5] The Silexx front-end and back-end platforms are a software application that is installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform. Use of any version of the Silexx platform is completely optional.

Currently, TPH or non-TPH market participants may receive order fill messages[6] (*i.e.,* drop copies) from their Silexx Brokers via the PULSe drop copy network. However, on January 4, 2021, the Exchange plans to migrate such functionality to Cboe Silexx in conjunction with the planned decommission of the PULSe Trader Workstation. At that time, TPH or non-TPH market participants may instead receive drop copies via the Cboe Silexx Platform. As a result, the Exchange proposes to adopt certain drop copy fees from the Cboe Options Fees Schedule to the Silexx Fees Schedule with certain modifications. Additionally, the Exchange is proposing to adopt a fee for order routing via Financial Information eXchange (''FIX'') into Cboe Silexx, and to replace the PULSe Routing Network via Silexx fee with a Cboe Silexx Routing Network fee.

The Exchange proposes to eliminate the PULSe Routing Network via Silexx fee from the Silexx Fees Schedule, which sets forth a fee for trading firms accessing the PULSe drop copy network from a non-PULSe, non-Silexx workstation for its customers' drop copies. Instead, the Exchange is proposing to adopt a fee for accessing the Silexx routing network to or from a non-Cboe Silexx workstation for order routing or drop copies. The proposed fee is $500 per month payable by the customer accessing the Silexx routing network on a per connection basis, and is similar to the existing PULSe Routing Network via Silexx fee that the Exchange is proposing to eliminate, with the exception that the proposed fee references the Silexx routing network rather than the PULSe Drop Copy Network and eliminates the reference to a non-PULSe workstation for order routing or drop copies. Further, the proposed fee is equal to the existing PULSe Routing Network via Silexx fee (*i.e.,* $500 per month per customer connection).

Second, the Exchange proposes to adopt a fee for drop copies received by a TPH customer via Cboe Silexx. The proposed fee is $425 per month payable by the TPH customer receiving the drop copies, unless otherwise directed by the TPH broker. Specifically, for each Cboe Silexx-using TPH broker that provides a TPH customer drop copies, such receiving TPH customer incurs a fee of $425 per month. The proposed fee is substantially similar to a fee charged to a PULSe-using TPH broker that provides a TPH customer drop copies via a PULSe workstation. The only difference between the proposed fee and the existing fee pertaining to PULSe users is that the TPH broker may direct that the fee be assessed to itself rather than the TPH customer receiving the drop copies. However, the TPH customer will be ultimately responsible for the fee.

Third, the Exchange proposes to adopt a drop copy payable by the TPH broker sending the drop copies to its non-TPH customers, unless otherwise directed by the TPH broker. Specifically, for each non-TPH Cboe Silexx-using customer for which a TPH broker provides drop copies, the TPH broker will incur a fee of $0.02/contract with a fee cap of $400 per month for each non-TPH customer to which the TPH broker sends drop copies. The proposed fee is substantially similar to the fee applied to drop copies received by a non-TPH customer via a PULSe workstation with one difference. Like the proposed fee for drop copies received by a TPH customer, the TPH broker may direct that the applicable fee be assessed to its customer rather than itself. However, the TPH broker will be ultimately responsible for the fee.

Lastly, the Exchange proposes to adopt a fee for orders routed via FIX into Cboe Silexx. Particularly, the Exchange proposes to adopt a fee for each TPH broker to whom a TPH customer using a non-Cboe Silexx workstation sends orders electronically to a TPH broker's Silexx workstation. The proposed fee is $500 per month for each TPH broker with a Silexx workstation to which the TPH customer sends orders. The proposed fee is substantially similar to the existing Non-PULSe-to-PULSe Routing (sent by TPH customers) fee set forth in the Cboe Fees Schedule with two differences. First, like the proposed fees discussed above, the TPH broker may direct the applicable fee be assessed to its customer rather than itself. However, the TPH broker will be ultimately responsible for the fee. Second, the Exchange is not proposing to adopt the provision that TPH customers who request FIX order routing into Cboe Silexx will also receive drop copies from its TPH brokers and must pay the monthly drop copy fee in addition to the in-bound addition fee.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its

[4] *See* Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR–CBOE–2019–061).

[5] *See* Securities Exchange Act Release No. 88741 (April 24, 2020) 85 FR 24045 (April 30, 2020) (SR–CBOE–2020–040).

[6] These fill messages allow customers to update positions, risk calculations, and streamline back-office functions.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78f(b)(4).

TPHs and other persons using its facilities.

The Exchange believes that its proposed fees are reasonable and appropriate as they are substantially similar with fees set forth in the Cboe Exchange Fees Schedule applicable to the PULSe workstation, which is a substantially similar order entry and management system to Silexx.[11] Despite certain differences in the proposed fees from the existing fees applicable to PULSe workstations, the Exchange believes that the proposed fees are reasonable for the following reasons. First, the proposed Cboe Silexx Routing Network fee would provide trading firms the ability to access the Cboe Silexx Routing Network to or from a non-Cboe Silexx workstation for not only drop copies, but also for order routing. Further, the proposed fee is equal to the existing PULSe Routing Network via Silexx fee despite that it provides order routing functionality in addition to drop copies. Second, while the proposed Drop Copy (received by TPH customer from Cboe Silexx) and Drop Copy (received by non-TPH customer) from Cboe Silexx fees provide that the TPH broker may direct the applicable fee be payable by itself or its customer, as applicable, the proposal may simplify and streamline billing for TPH brokers and their customers. Lastly, the proposed FIX order routing into Cboe Silexx fee differs from the Non-PULSe-to-PULSe Routing (sent by TPH customers) fee currently provided in the Cboe Options Fee Schedule as it does not provide that TPH customers requesting such order routing functionality will receive drop copies from its TPH brokers and must pay the monthly drop copy fee in addition to the in-bound addition fee. The Exchange believes it is reasonable not to include such language as it is no longer applicable.

Additionally, as discussed, use of drop copy functionality and FIX order routing into Cboe Silexx is discretionary and not compulsory. Indeed, Users can choose to route orders, including to Cboe Options, and receive drop copies without the use of the platform. The Exchange is making the platform available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the platform is merely an alternative that will be offered by the Exchange. The Exchange believes the proposed fees are equitable and not unfairly discriminatory because they apply to all market participants uniformly.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change will not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates to optional services on an optional platform. The proposed fees will apply to similarly situated participants uniformly. Also as discussed, the use of the platform and the drop copy services will be completely voluntary and market participants will continue to have the flexibility to use any order entry and management tool that is proprietary or from third-party vendors, and/or market participants may choose any executing brokers to enter their orders and receive drop copies. Cboe Silexx is not an exclusive means of order routing or to receive drop copies, and if market participants believe that other products, vendors, front-end builds, etc. available in the marketplace are more beneficial than the Cboe Silexx platform, they may simply use those products instead. Use of such functionality is completely voluntary.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes are substantially similar to fees applicable to the PULSe workstation, which is a substantially similar order entry and management system and which is migrating to Cboe Silexx in conjunction with the planned decommission of the PULSe Trader Workstation on January 4, 2021. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–CBOE–2021–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2021–002. 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

[11] *See* Cboe Options Fees Schedule, which provides for a PULSe workstation drop copy (received by TPH customer) fee of $425 per month, a drop copy (received by non-TPH customer) fee of $0.02 per contract capped at $400 per month, and a Non-PULSe-to-PULSe Routing (sent by TPH customers) fee of $500 per month.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2021–002 and should be submitted on or before February 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01285 Filed 1–21–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90930; File No. PCAOB–2020–01]

Public Company Accounting Oversight Board; Order Granting Approval of Amendments to PCAOB Interim Independence Standards and PCAOB Rules to Align with Amendments to Rule 2–01 of Regulation S–X

January 14, 2021.

I. Introduction

On November 20, 2020, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act'') and Section 19(b)[2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), a proposal to adopt amendments to the PCAOB's interim independence standards and PCAOB rules to align with the Commission's recent adoption of amendments 17 CFR 210.2–01 (''Rule 2–01'') of 17 CFR 210.01 *et seq.* (''Regulation S–X'')[3] (collectively, the ''Proposed Rules'').[4] The Proposed Rules were published for comment in the **Federal Register** on November 27, 2020.[5] We received several comment letters in response to the notice.[6] This order approves the Proposed Rules, which we find to be consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

II. Description of the Proposed Rules

On November 19, 2020, the Board adopted amendments to the PCAOB's interim independence standards and PCAOB rules to align with amendments by the SEC to Rule 2–01 of Regulation S–X.[7] The Proposed Rules are intended to avoid differences and duplicative requirements. To that end, the Board adopted targeted amendments to its interim independence standards applicable to lending arrangements between auditors and audit clients. In addition, the Board adopted targeted amendments to align certain terms defined in PCAOB Rule 3501 with the Commission's recent amendments to its definitions of those terms in 17 CFR 210.2–01(f) (''Rule 2–01(f)'').

A. Changes to PCAOB Standards

The Proposed Rules will make the following changes:

- Amend ET § 101.02 of the American Institute of Certified Public Accountants (''AICPA'') Code of Professional Conduct, *Interpretation of Rule 101,* as in existence on April 16, 2003 and incorporated in the Board's auditing and related professional practice.
- Delete ET § 101.07 of the AICPA's Code of Professional Conduct, *Loans from financial institution clients and related terminology,* as in existence on April 16, 2003 and incorporated in the Board's auditing and related professional practice standards by PCAOB Rule 3500T.
- Delete ET §§ 191.150–.151, ET §§ 191.182–.183, ET §§ 191.196–.197, and ET §§ 191.220–.222, of the AICPA's Code of Professional Conduct, as in existence on April 16, 2003 and incorporated in the Board's auditing and related professional practice standards by PCAOB Rule 3500T, which are four Ethics Rulings under Rule 101 that also address lending arrangements and are part of the Board's interim independence standards.
- Amend PCAOB Rules 3501(a)(ii), (a)(iii), and (i)(ii).

B. Applicability and Effective Date

The Proposed Rules will be effective June 9, 2021, 180 days after the date of the publication of the Commission's October 16, 2020 amendments to Rule 2–01 in the **Federal Register**. The June 9, 2021 effective date is aligned with the effective date of the Commission's amendments to Rule 2–01.[8] Auditors may elect to comply before the effective date at any point after SEC approval of the Board's amendments, provided that the final amendments are applied in their entirety. The PCAOB has recommended that the Proposed Rules to apply to audits of emerging growth companies (''EGCs''),[9] as discussed in Section IV below, and audits of brokers and dealers under 17 CFR 240.17a–5 (''Exchange Act Rule 17a–5'').

III. Comment Letters

The comment period on the Proposed Rules ended on December 18, 2020. We received several comment letters representing investor organizations, advisory firms, accounting firms, trade organizations, and other interested parties. Some commenters were supportive[10] of the Proposed Rules

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] *See Qualifications of Accountants,* Release No. 33–10876 (Oct. 16, 2020) (''2020 Adopting Release'').

[4] *See Amendments to PCAOB Interim Independence Standards and Board Rules to Align with Amendments to Rule 2–01of Regulation S–X,* PCAOB Release No. 2020–03 (Nov. 19, 2020) (''PCAOB Adopting Release''), *available at https://pcaobus.org/Rulemaking/Docket047/2020-003-Independence-final-rule.pdf.*

[5] *See Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments to PCAOB Interim Independence Standards and PCAOB Rules to Align with Amendments to Rule 2–01 of Regulation S–X,* Release No. 34–90473 (Nov. 20, 2020) [85 FR 76131 (Nov. 27, 2020)].

[6] *See, e.g.,* comment letters from the Council of Institutional Investors, December 3, 2020 (''CII Letter''); Right Advisory LLC, December 7, 2020 (''RA Letter''); Deloitte LLP, December 11, 2020 (''Deloitte Letter''); PricewaterhouseCoopers LLP, December 16, 2020 (''PwC Letter''); Colorado PERA, December 16, 2020 (''COPERA''); International Corporate Governance Network, December 16, 2020 (''ICGN Letter''); Consumer Federation of America and Certain Other Groups and Individuals, December 17, 2020 (''CFA, et al. Letter''); Ernst & Young LLP, December 18, 2020 (''EY Letter''); and the California Public Employees' Retirement System, December 18, 2020 (''CalPERS Letter''). Copies of the comment letters received on the Commission order noticing the Proposed Rules are available on the Commission's website at *https://www.sec.gov/comments/pcaob-2020-01/pcaob202001.htm.*

[7] *See supra* note 4.

[8] *See* 2020 Adopting Release at 81.

[9] The term ''emerging growth company'' is defined in Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). *See also* Release No. 33–10332 *Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act* (Mar. 31, 2017), 82 FR 17545 (Apr. 12, 2017).

[10] *See* RA Letter; Deloitte Letter; PwC Letter; and EY Letter.

while other commenters asked the Commission to consider certain changes to auditor independence unrelated to the Proposed Rules [11] or reiterated comments addressed by the Commission in the 2020 Adopting Release.[12]

The Sarbanes-Oxley Act requires us to determine whether the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws, or are necessary or appropriate in the public interest or for the protection of investors.[13] In making this determination, we have considered the comments we received. The comments received on the Proposed Rules did not raise new issues for the Commission to address. The commenters in support of the Commission's approval of the Proposed Rules reiterated their prior support for the 2020 Adopting Release and noted the benefits of eliminating differences between the Commission's and the PCAOB's auditor independence rules while focusing on those relationships and services that are more likely to threaten an auditor's objectivity and impartiality.[14] Commenters opposing the Commission's approval of the Proposed Rules reiterated certain concerns regarding amendments in the Commission's 2020 Adopting Release or expressed concerns about the PCAOB's process to adopt the Proposed Rules at this time. For example, some commenters [15] expressed concerns about the ''Affiliate of the Audit Client'' definition while one commenter [16] broadly opposed many of the specific amendments within the Commission's 2020 Adopting Release. Some commenters [17] also expressed the desire for a rule that would specify the documentation that auditors should prepare and maintain when additional services are provided to an affiliate of an audit client.[18] One commenter [19] suggested a public certification of the design and operating effectiveness of controls over audit quality and independence by executives of the audit firm.[20] The commenters [21] who expressed concerns about the PCAOB's process to adopt the Proposed Rules at this time requested the PCAOB to use its independent authority to expand the scope of the rulemaking beyond conforming amendments to the Commission's 2019 and 2020 Adopting Releases.

After considering the public comments and recommendations, we are approving the Proposed Rules. The comments the Commission has received with respect to the Proposed Rules are generally similar to the comments the Commission considered when approving the 2020 Adopting Release and the Auditor Independence with Respect to Certain Loans or Debtor-Creditor Relationships Release (the ''2019 Adopting Release'').[22] As the Commission noted in the 2020 Adopting Release, the Commission expects the amendments to Rule 2–01 to more effectively focus the independence analysis on those relationships or services that are more likely to pose threats to an auditor's objectivity and impartiality. After considering public comments, the Commission noted that the amendments to Rule 2–01 would benefit audit firms, audit clients, and investors in several ways. First, by revising the rules to emphasize those relationships and services that are more likely to threaten auditor objectivity and impartiality, the Commission anticipates the amendments will reduce compliance costs for audit firms and their clients. Similarly, under the amended rules, auditors and their clients will be able to focus their resources and attention on monitoring those relationships and services that pose the greatest risk to auditor independence, reducing overall compliance burdens without significantly diminishing investor protections. [23] The Proposed Rules, which conform the PCAOB's independence requirements to the 2020 Adopting Release, will allow firms, audit clients and investors to take advantage fully of the anticipated benefits of the amendments to Rule 2–01.

IV. Effect on Emerging Growth Companies

In the PCAOB Adopting Release, the Board recommended that the Commission determine that the Proposed Rules apply to audits of EGCs.[24] Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as amended by Section 104 of the Jumpstart Our Business Startups Act of 2012, requires that any rules of the Board ''requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an [EGC].'' The provisions of the Proposed Rules do not fall into these categories.

Section 103(a)(3)(C) further provides that ''[a]ny additional rules'' adopted by the PCAOB after April 5, 2012, do not apply to audits of EGCs ''unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.'' The Proposed Rules fall within this category. Having considered those statutory factors, we find that applying the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest.

To inform consideration of the application of auditing standards to audits of EGCs, the PCAOB staff

[11] *See* RA Letter.

[12] *See* CII Letter; CFA, et al. Letter.

[13] *See* Section 107(b)(3) of the Sarbanes-Oxley Act. The Sarbanes-Oxley Act also specifies that the provisions of Section 19(b) of the Exchange Act shall govern the proposed rules of the Board. *See* Section 107(b)(4) of the Sarbanes-Oxley Act. Section 19 of the Exchange Act pertains to the registration, responsibilities, and oversight of self-regulatory organizations. Under the procedures prescribed by the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, the Commission must either approve or disapprove, or institute proceedings to determine whether the proposed rules of the Board should be disapproved; and these procedures do not expressly permit the Commission to amend or supplement the proposed rules of the Board.

[14] *See* Deloitte Letter; PwC Letter; EY Letter; RA Letter.

[15] *See* CII Letter; CFA et al. Letter; and CalPERS Letter.

[16] *See* CFA et al. Letter.

[17] *See supra* note 15.

[18] In considering a rule adopted by the PCAOB under the Sarbanes-Oxley Act, the Commission may only take action to approve or disapprove any such rule. As such, any recommendation to alter the Proposed Rules is outside the scope of this Order.

[19] *See supra* note 11.

[20] *See supra* note 18.

[21] *See* CFA et al Letter, COPERA Letter; ICGN Letter; and CalPERS Letter. One commenter specifically expressed concerns regarding the PCAOB relying on the Commission's deliberation in adopting the 2020 Adopting Release. *See* CalPERS Letter. In the PCAOB Adopting Release, the Board noted its consideration of the Commission's rulemaking record and stated that ''[it] believes that this process—structured by the Commission to satisfy the requirements of the Administrative Procedure Act—is at least as robust as the Board's process would have been had the PCAOB considered amendments to the Board's independence requirements without the benefit of the SEC's analysis.'' *See* PCAOB Adopting Release, at 12. The Board further noted that it did not perceive ''any reason or compelling basis in the [Commission's] rulemaking record'' to diverge from the Commission's stated goals and maintain disparate independence requirements. *Id.* Because we agree with the Board's conclusions on these points, we are not persuaded by the commenter who objected to the PCAOB's processes.

[22] *See* Adopting Release, at 88–90.

[23] *See* Release No. 33–10648 (June 18, 2019), [84 FR 32040 (July 5, 2019)]. Some commenters explicitly cited to their prior comment letters submitted when the Commission considered the 2020 Adopting release and the 2019 Adopting Release. *See* CII Letter, Deloitte Letter, PwC Letter, and Consumer Federation of America, et al. Letter.

[24] *See* PCAOB Adopting Release at 27.

published a white paper that provides general information about characteristics of EGCs (''EGC White Paper'').[25] In the EGC White Paper, the PCAOB staff stated that ''[a]pproximately 96% of EGC filers were audited by accounting firms that also audit issuers that are not EGC filers.'' [26] Additionally, the PCAOB Adopting Release discussed the Commission's intent to improve the practical application of Rule 2–01 of Regulation S–X and reduce compliance burdens, which may lead to increased competition among auditors and facilitate capital formation. The Board noted that if the Proposed Rules were determined not to apply to the audits of EGCs, auditors would be required to address the differing independence requirements in their independence policies and procedures and in their quality control systems as a result of the differences between the Board and Commission requirements, which would create the potential for confusion.[27]

We agree with the Board's analysis. We believe the Proposed Rules will benefit EGCs at least as much as non-EGCs, in part, because the Commission's amendments to Rule 2–01 were meant to more effectively focus the independence analysis on those relationships or services that are more likely to pose threats to an auditor's objectivity and impartiality.

As such, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, we believe there is a sufficient basis to determine that applying the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules, the information submitted therewith by the PCAOB and the comment letters received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules to the audits of EGCs is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No.PCAOB–2020–01) be and hereby are approved.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–01311 Filed 1–21–21; 8:45 am]

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[25] *See Characteristics of Emerging Growth Companies and their Audit Firms as of November 15, 2019* (November 9, 2020), available at *https://archive.pcaobus.org/EconomicAndRiskAnalysis/ProjectsOther/Documents/White-Paper-Characteristics-Emerging-Growth-Companies-November-15-2019.pdf.*

[26] *See* EGC White Paper at 13.

[27] *See* PCAOB Adopting Release at 27.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90926; File No. SR–CBOE–2020–106]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Its Rules Regarding the Minimum Increments for Electronic Bids and Offers and Exercise Prices of Certain FLEX Options and Clarify in the Rules How the System Ranks FLEX Option Bids and Offers for Allocation Purposes

January 14, 2021.

On November 16, 2020, Cboe Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules regarding the minimum increments for electronic bids and offers and exercise prices of certain FLEX options and clarify how the system ranks FLEX option bids and offers for allocation purposes. On November 30, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission published notice of the proposed rule change, as modified by Amendment No. 1, in the **Federal Register** on December 4, 2020.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 18, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 4, 2021, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1 (File Number SR–CBOE–2020–106).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01282 Filed 1–21–21; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90536 (November 30, 2020), 85 FR 78381.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90919; File No. SR–CboeBZX–2021–002]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to the BZX Top Feed

January 14, 2021

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 January 4, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to the BZX Top Feed. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the fees applicable to the BZX Top Feed, which is an uncompressed data feed that offers both top-of-book quotations and execution information based on equity orders entered into the System.[3] Specifically, the Exchange proposes to: (1) Increase the fee for internal distribution of the BZX Top Feed; and (2) introduce Professional User fees for internal Professional Users of the BZX Top Feed. The current fees for external distribution of the BZX Top Feed will continue to apply, without change, including various incentive programs that the Exchange has adopted to facilitate the provision of lower-cost market data to retail and other investors.[4]

Market Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5] As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [6]

Equity trading is currently dispersed across sixteen exchanges, including three new U.S. equities exchanges that launched trading in 2020, 32 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing fiercely for order flow. Based on publicly-available information, no single U.S. equities exchange has more than 20% market share.[8] In turn, the market for top-of-book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (''SIPs'') to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public.[9] Top-of-book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top-of-book data, but no rule or regulation of the Commission requires market participants to purchase top-of-book data from an exchange.[10] The BZX Top Feed therefore competes with the SIP and with similar products offered by other national securities exchanges that offer their own competing market data products. In fact, there are twelve competing products offered by other national securities exchanges today,[11] not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. equities exchanges also offers similar top-of-book data.

Fees for Internal Distribution of the BZX Top Feed

Currently, the Exchange charges a modest fee of $500 per month for internal distribution of BZX Top Feed data,[12] *i.e.,* distribution within the distributor's own firm,[13] and does not charge any additional fees for internal distribution based on the number of Professional or Non-Professional Users that receive access to this information. These internal distribution fees have been in place, without change, since July 2013 when the Exchange first began charging for access to the BZX Top Feed, which had previously been available free of charge.[14] In the time since, the Exchange has made a number of significant enhancements to its platform, including, among other things, a significant expansion of its listing program for exchange-traded products,[15] that have resulted in improved trading opportunities for investors and, consequently, more valuable market data.

As discussed, the Exchange now proposes to increase certain fees applicable to firms that consume this

[3] *See* BZX Rule 11.22(d).

[4] *See e.g.,* BZX Schedule of Fees, Financial Product Distribution Program. The Financial Product Distribution Program lowers the cost of distributing Derived Data based upon the Exchange's top-of-book offerings, including Derived Data that is often used by retail investors.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS Adopting Release'').

[6] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, *available at http://markets.cboe.com/us/equities/market_share/.*

[9] *See* Rule 602 of Regulation NMS.

[10] By contrast, Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

[11] Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE BQT, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, IEX TOPS, MIAX PEARL Equities Top of Market Feed, and MEMX MEMOIR Top.

[12] *See* BZX Schedule of Fees, BZX Top, Internal Distribution.

[13] The Exchange's fee schedule defines an Internal Distributor of an Exchange Market Data product as a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *See* BZX Schedule of Fees, Market Data Fees, Definitions.

[14] *See* Securities Exchange Act Release No. 69936 (July 3, 2013), 78 FR 41483 (July 10, 2013) (SR–BATS–2013–39).

[15] *See https://markets.cboe.com/services/listings/.*

data as internal distributors, *i.e.,* firms that use BZX Top Feed data for internal purposes as opposed to firms that distribute such data externally to its customers. As proposed, the Exchange would increase the monthly charge for internal distribution of BZX Top Feed data to $750 per month, which would continue to be significantly cheaper than similar products offered by the Exchange's main competitors, including both other national securities exchanges that offer top-of-book data products to their customers as well as the SIPs that provide similar ''core data'' to vendors and subscribers pursuant to Regulation NMS. In addition, the Exchange would introduce Professional User fees for internal Professional Users of the BZX Top Feed. Those Professional User fees will be the same as the modest fee currently charged for external distribution of the BZX Top Feed, *i.e.,* $4 per month for each Professional User. There would continue to be no charge associated with internal distribution to Non-Professional Users. Further, as discussed, the current fees for external distribution of the BZX Top Feed would continue to apply, without change, including various incentive programs that the Exchange has adopted to facilitate the provision of lower-cost market data to retail and other investors. As a result, the Exchange believes that the proposed fee changes would allow it to be appropriately compensated for the value of its market data, particularly from professional financial services firms that use that data for internal purposes, while simultaneously ensuring that its data would continue to be available to a wide range of market participants at a cost that facilitates widespread availability of such data.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[16] in general, and furthers the objectives of Section 6(b)(4),[17] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[18] Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,[19] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange operates in a highly competitive environment. Indeed, with the launch of three new national securities exchanges that trade U.S. equity securities last September, there are now sixteen registered U.S equities exchanges, and with the exception of Long-Term Stock Exchange, Inc. (''LTSE''), which has determined to not offer any proprietary market data feeds, each of these exchanges offer associated market data products to their customers, either with or without a fee. The national securities exchanges also compete with the SIPs for market data customers, as much of the information offered to market participants and investors through the BZX Top Feed is similarly made available to market participants and investors through the SIPs, consolidated with data from each of the other fifteen exchanges. It is in this robust and competitive market in which the Exchange is proposing to modestly increase its fees.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Further, with respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data: ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' [20] The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [21] As discussed in this filing, significant competitive forces constrain the ability of the Exchange to charge supra-competitive fees.

i. The BZX Top Feed Is an Optional Market Data Product, and the Exchange is Constrained in Its Pricing by Significant Competitive Forces

Subscribing to the BZX Top Feed is entirely optional. The Exchange is not required to make the BZX Top Feed available to any customers, nor is any customer required to purchase the BZX Top Feed. Unlike certain other data products that firms may be required to purchase in order to fulfill regulatory obligations,[22] *e.g.,* the consolidated quotation and last-sale information feeds offered by the SIPs, a customer's decision as to whether to purchase the BZX Top Feed is entirely discretionary, and is based on that firms individual business needs. Generally, firms that choose to subscribe to the BZX Top Feed do so because they believe that it is a cost-effective alternative to core data offered by the SIPs that provides valuable information about the market for securities traded on the Exchange, particularly in cases where a consolidated display is not required pursuant to the Vendor Display Rule. Such firms are able to determine for themselves whether the BZX Top Feed helps them to achieve their business goals, and if so, whether or not it is attractively priced compared to other similar products.

Indeed, if the BZX Top Feed does not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the BZX Top Feed. In fact, comparing the number of internal distributors that currently subscribe to the BZX Top Feed, based on data compiled by the Exchange as of November 2020, to the total number of internal distributors that subscribe to core data offered by the CTA and UTP SIPs, as published on plan websites for Q3 2020,[23] less than 9.5% of internal

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78k–1.

[19] *See* 17 CFR 242.603.

[20] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[21] *Id.* at 535.

[22] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See* In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[23] *See* CTA Quarterly Population Metrics (Q3 2020), *available at https://www.ctaplan.com/publicdocs/ctaplan/CTAPLAN_Population_Metrics_3Q2020.pdf;* UTP Quarterly Population

distributors that purchase U.S. equities data choose to subscribe to the BZX Top Feed. The BZX Top Feed therefore represents an insignificant proportion of the relevant market for such market data, and significantly more internal distributors choose not to purchase this product than those that do. Given the insignificant percentage of internal distributors that consume the BZX Top Feed, it is clear that such firms can and do exercise their right to choose to purchase, or not purchase, this particular market data product.

Although the Exchange is not required to make any data, including top-of-book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display often choose the SIP to satisfy their top-of-book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor or fintech firm may choose to purchase the BZX Top Feed, or a similar product from another exchange, in order to perform investment analysis, or to provide general information about the market for U.S. equity securities, respectively. In either case the choice to purchase the BZX Top Feed would be based on the firm's determination of the value of the data offered by their chosen product compared to the cost of acquiring this data instead of receiving similar data from other sources. The BZX Top Feed serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all sixteen U.S. equities exchanges. Making alternative products available to market participants ultimately ensures competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees.

Further, in the event that a market data customer views one exchange's top-of-book data product and/or fees as more or less attractive than a competitor's offerings they can and often do switch between competing products. As discussed, much of the top-of-book quotation information and last-sale information offered within the BZX Top Feed is also available on the SIP feeds, and for firms that do not require a consolidated display, as is typically the case for the subscribers to the BZX Top Feed, similar top-of-book information is available from a number of competing U.S. equities exchanges.[24] This include a number of large established exchanges that charge for access to such top-of-book data, as well as certain smaller or new exchange entrants that provide similar data without charge, in many cases as a way of attracting customers to their exchange while they seek to grow market share. In this way, the BZX Top Feed, SIP data products, and other top-of-book products offered by a number of U.S. equities exchanges, are all substitutes. The availability of these substitute products constrains the Exchange's ability to charge supra-competitive prices as market participants can easily obtain similar data from one of the Exchange's many competitors. In fact, the impact of competition on the market in which the BZX Top Feed is offered to market participants and investors is showcased by the Exchange's other recent fee changes related to this product, which involved the *reduction* of fees to facilitate the Exchange's ability to compete for customers.[25] Distributors can discontinue use of the BZX Top Feed at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

In setting the proposed fees for the BZX Top Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. Indeed, the Exchange has no market power and is not in a position to charge unreasonable fees for its top-of-book data as there are a number of competing products in the market, including products that are currently offered free of charge by certain other exchanges that have determined not to charge for their market data. The existence of alternatives to the BZX Top Feed ensures that the Exchange cannot set unreasonable fees when vendors and subscribers can freely elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

ii. The Proposed Fees Are Reasonable Given the Value of the Data Provided to Customers, and When Compared to Competing Market Data Products

The proposed fees are also reasonable as they represent a modest increase for top-of-book data that has proven valuable for investors, particularly as the Exchange grows market share due to its innovative market model that has been successful in attracting retail limit orders, increasing the Exchange's market share to over 7% consolidated U.S. equities volume.[26] Specifically, the BZX Top Feed offers competitively-priced alternative to top-of-book data disseminated by SIPs, *i.e.,* core data, for firms that do not need or desire a consolidated display covering all sixteen U.S. equities exchanges, or similar data disseminated by other national securities exchanges. It is purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the BZX Top Feed benefits a wide range of investors that participate in the national market system. As discussed, the decision to purchase a particular market data product from a particular exchange is largely based on two factors: (1) The quality of the data, and (2) the price charged for access to that data. The Exchange believes that the BZX Top Feed is competitive on both of these factors.

First, the BZX Top Feed would remain competitively priced compared to similar products offered by other comparable U.S. equities exchanges and core data offered by the SIPs. Although the BZX Top Feed is not offered free of charge like certain other competitor offerings, particularly those offered by newer U.S. equities exchanges that are seeking to grow market share, it is made available at a price that is significantly

Metrics (Q3 2020), *available at https://www.utpplan.com/DOC/UTP_2020_Q3_Stats_with_Processor_Stats.pdf.*

[24] Although the Exchange does not have access to the customer lists for other competing products, it understands based on conversations with subscribers to the BZX Top Feed that they typically view exchange top-of-book products as substitutes and do not generally look to purchase such data from more than one national securities exchange.

[25] *See supra* note 4. The Exchange also notes that while this proposed fee change involves an increase in fees, it is simultaneously filing another proposed fee change to expand its Financial Products Distribution Program and further *reduce* certain fees. *See* SR–CboeBZX–2021–003 (pending publication).

[26] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, *available at http://markets.cboe.com/us/equities/market_share/.*

lower than the prices charged by the Exchange's main competitors—*i.e.,* those with comparable market shares and data quality. Notably, even with the proposed fee increase, the BZX Top Feed would remain significantly cheaper than similar products offered by New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''Arca''), and The Nasdaq Stock Market LLC (''Nasdaq'') both in terms of the fees charged for internal distribution and the fees charge for each Professional User that is provided access to the feed. For example, NYSE charges a total of $3,000 per month for internal distribution of their equivalent products, *i.e.,* $1,500 per month for applicable top-of-book quotation information,[27] and an additional $1,500 per month for transaction information,[28] both of which are included in the BZX Top Feed for a single fee.[29] Arca, which has a similar pricing model to NYSE, also charges a higher rate of $1,500 per month for internal distribution of its equivalent products, separated into a $750 per month charge for top-of-book quotation information and an additional $750 per month charge for transaction information.[30] Finally, Nasdaq charges its internal distributors a fee of $1,500 per month for Nasdaq Basic, which includes both top-of-book quotation information and transaction information for the same fee, similar to the Exchange's pricing model, but again at a higher cost.[31] In each case, the internal distribution charges associated with obtaining comparable U.S. equities market data from NYSE, Arca, and Nasdaq runs at least double and up to four times as much as the proposed fee to be charged by the Exchange, meaning that the Exchange would continue to be offering its data at a price that is attractive compared to the prices charged by its competitors. Similarly, each of these exchanges charges a fee for each Professional User that is higher than that proposed by the Exchange—*i.e.,* $26 per month for Nasdaq,[32] and $8 per month total for both NYSE and Arca.[33] Finally, the BZX Top Feed also remains competitively priced compared to core data provided by the SIPs for firms, *e.g.,* buy-side investors or fintech firms, that do not need or desire a consolidated display covering all sixteen U.S. equities exchanges.[34]

Second, the proposed fees are reasonable given the value of the data provided in the BZX Top Feed and used by data recipients in their profit-generating activities. The BZX Top Feed provides top-of-book quotations and transactions executed on the Exchange, and provides a valuable window into the market for securities traded on a market that accounts for about 4.5% of U.S. equity market volume today.[35] As discussed, the Exchange offers the BZX Top Feed in a competitive environment where firms may freely choose which market data products best suit their business needs. Invariably, firms that choose to purchase the BZX Top Feed instead of receiving one of the many free products offered by other exchanges,[36] including free products offered by an affiliate of the Exchange,[37] have decided that the value of the BZX Top Feed is greater than that offered by those other products. Indeed, by incentivizing market quality improvements through its Lead Market Maker (''LMM'') and other programs designed to enhance the quality of its market, the Exchange is able to offer higher quality market data products to customers. In turn, investors may choose to rely on those products instead of other competitor offerings based on the value they provide in relation to any additional cost associated with obtaining that market data from the Exchange. The Exchange therefore believes that its proposal is consistent with the principles enshrined in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [38]

iii. The Proposed Fees Are Equitable and Not Unfairly Discriminatory as Internal Distributors Will Be Subject to Uniform Pricing Based on Their Usage of the Data

The Exchange believes the proposed fees for internal distribution of the BZX Top Feed will continue to be allocated fairly and equitably among subscribers, and are not unfairly discriminatory, as the proposed fees will apply equally to all data recipients that choose to subscribe to the BZX Top Feed and distribute that data to internal subscribers. As proposed, all internal distributors of the BZX Top Feed will be subject to the same internal distribution fee, regardless of the type of business that they operate, or the use they plan to make of the data feed. Thus, all internal distributors would have access to the BZX Top Feed on the same equitable and non-discriminatory terms. Similarly, with the introduction of Professional User fees, internal distributors of the BZX Top Feed will be subject to the same modest fees based solely on the number of Professional Users that each internal distributor has chosen to permission for access to this information. The Exchange does not believe that it is inequitable, or unfairly discriminatory, to charge a fee based on the number of Professional Users within a firm that have access to the BZX Top Feed as this ensures that firms with the highest usage pay their equitable share for the data.

The Exchange also believes that it is fair and equitable, and not unfairly discriminatory, to continue *not* to charge a fee for internal distribution to Non-Professional Users. The Exchange's fee structure is generally designed to facilitate lower cost access to its market data by retail investors, either through substantially lower User fees for Non-Professional Users, or other incentive programs, such as the Small Retail Broker Distribution Program, which was recently implemented to lower the cost of the Exchange's market data to small broker-dealers that serve retail investors. The Exchange does not anticipate any significant number of Non-Professional Users to receive BZX Top Feed Data through internal, *i.e.,* within the distributor's firm, as opposed to external distribution, and in the event that certain firms may distribute data internally to Users that qualify as Non-Professional, providing such Users access without any User fees would

[27] *See* NYSE PDP Market Data Pricing, Section 1.3, NYSE BBO.

[28] *See* NYSE PDP Market Data Pricing, Section 1.4, NYSE Trades.

[29] *See supra* note 3 and accompanying text. The Exchange also offers a separate market data product, *i.e.,* BZX Last Sale, that exclusively provides last sale information. *See* BZX Rule 13.8(d). However, all of the information contained in the BZX Last Sale Feed is also made available in the BZX Top Feed at no additional charge.

[30] *See* NYSE PDP Market Data Pricing, Section 3.3, NYSE Arca BBO; NYSE PDP Market Data Pricing, Section 3.4, NYSE Arca Trades.

[31] *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(c)(1). In addition, Nasdaq also charges distributors a $100 monthly administrative fee. *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 135.

[32] Nasdaq's Professional User fee is divided into Nasdaq issues ($13), NYSE issues ($6.50), and other issues ($6.50) for a total of $26 per month for each Professional User. *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

[33] NYSE and Arca's fees are both broken down into $4 per month for BBO information and an additional $4 per month for Trades information. *See supra* notes 27, 28, and 30.

[34] *See* CTA Schedule of Market Data Charges, *available at https://www.ctaplan.com/pricing;* UTP Fee Schedule, *available at https://utpplan.com/DOC/Datapolicies.pdf.*

[35] *See https://markets.cboe.com/us/equities/market_share/.*

[36] *See e.g.,* Investors Exchange Fee Schedule, Market Data fees.

[37] *See e.g.,* Cboe EDGA Exchange, Inc., Fee Schedule, EDGA Top.

[38] *See* Regulation NMS Adopting Release, *supra* note 5, at 37503.

facilitate the Exchange's overall goals of facilitating access to its data by retail investors, which the Commission has continually found to be consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top-of-book data is broadly disseminated by both the SIPs and the sixteen U.S. equities exchanges. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing U.S. equities exchanges without charge. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper top-of-book data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all internal distributors of the BZX Top Feed on an equal and non-discriminatory basis. The Exchange therefore believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that particular fees would apply to only a subset of subscribers, *e.g.,* Professional versus Non-Professional Users, those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In setting the proposed fees, the Exchange is constrained by the availability of numerous substitute products offered by other national securities exchanges as well as core data offered by the SIPs. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [39] and paragraph (f) of Rule 19b–4 [40] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–2021–002 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–2021–002. 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–2021–002 and should be submitted on or before February 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01279 Filed 1–21–21; 8:45 am]

BILLING CODE 8011–01–P

[39] 15 U.S.C. 78s(b)(3)(A).

[40] 17 CFR 240.19b–4(f).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90928; File No. SR–ICC–2021–001]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ICC Clearing Rules

January 14, 2021.

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 January 7, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission the proposed rule change as described in Items I and II below, which Items have been prepared primarily by ICC. ICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Clearing Rules (the ''Rules'') [5] to clarify an existing requirement of Participants regarding the provision of margin or collateral (''Non-Participant Collateral'') by clients (''Non-Participant Parties'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC proposes revisions to Rule 406(b) to clarify an existing requirement of Participants regarding the provision of Non-Participant Collateral by Non-Participant Parties and to update the terminology in a manner that is consistent with amended Commodity Futures Trading Commission (''CFTC'') Regulation 39.13(g)(8)(ii),[6] applicable to ICC as a derivatives clearing organization, which requires compliance by January 27, 2021. As such, ICC has filed the proposed rule change for immediate effectiveness and proposes that it will be operative on or about January 27, 2021 and subject to any regulatory review, approval, or other process. ICC will issue a circular notification, in advance of the operative date. The proposed revisions are described in detail as follows.

ICC proposes changes to Rule 406, which sets out certain requirements with respect to client-related positions of futures commission merchant (''FCM'') and broker-dealer Participants. Under current Rule 406(b), a Participant must require each Non-Participant Party to provide Non-Participant Collateral in an amount no less than ICC's margin requirement with respect to the relevant client-related position(s). The proposed changes clarify that such amount would be commensurate with the risk presented by such Non-Participant Party. The proposed changes also remove general language whereby ICC may require additional margin with respect to Non-Participant Parties and, instead, direct Participants to identify Non-Participant Parties with heightened risk profiles and collect margin from them at a level exceeding 100% of ICC's margin requirement, by such amount as is commensurate with the risk presented. Such changes are intended to clarify and incorporate terminology that is consistent with amended CFTC Regulation 39.13(g)(8)(ii) [7] to facilitate compliance.

In connection with the proposed amendments, ICC would also revoke Circular 2012/008 (the ''Circular'') [8] which requires FCM Participants to collect margin from Non-Participant Parties in respect of such Non-Participant Parties' non-hedge positions, at a level that is 10% greater than ICC's related margin requirement with respect to each product and swap portfolio. Amended CFTC Regulation 39.13(g)(8)(ii) [9] intended to replace this prior market structure, which is reflected in current Rule 406 and the Circular.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [10] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[11] In particular, Section 17A(b)(3)(F) of the Act [12] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. The proposed rule change would update Rule 406(b) to provide clarification to the existing requirement and to update the terminology in a manner that is consistent with amended CFTC Regulation 39.13(g)(8)(ii).[13] Specifically, the proposed revisions clarify that the amount of Non-Participant Collateral would be commensurate with the risk presented by such Non-Participant Party. The proposed changes also remove general language whereby ICC may require additional margin with respect to Non-Participant Parties and, instead, direct Participants to identify Non-Participant Parties with heightened risk profiles and collect margin from them at a level exceeding ICC's margin requirement. Such changes would accordingly replace the requirement in the Circular, which ICC believes is appropriate to facilitate compliance with amended CFTC Regulation 39.13(g)(8)(ii),[14] and better support ICC's ability to manage the risks posed by Non-Participant Parties as the proposed changes result in Participants collecting Non-Participant Collateral at levels commensurate with the risk presented by each Non-Participant Party. Such changes further provide clarity and transparency on the requirement in Rule 406(b) regarding the provision of Non-Participant Collateral and thus strengthen the Rules with clear and more specific guidance, which supports the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. The proposed rule change is thus consistent with the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[15]

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Capitalized terms used but not defined herein have the meanings specified in the Rules.

[6] 17 CFR 39.13(g)(8)(ii).

[7] *Id.*

[8] The Circular was issued on April 20, 2012 and is available at the following: *https://www.theice.com/publicdocs/clear_credit/circulars/Circular_2012_008_FINAL.pdf.*

[9] 17 CFR 39.13(g)(8)(ii).

[10] 15 U.S.C. 78q–1.

[11] 17 CFR 240.17Ad–22.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 39.13(g)(8)(ii).

[14] *Id.*

[15] 15 U.S.C. 78q–1(b)(3)(F).

The amendments would also satisfy relevant requirements of Rule 17Ad–22.[16] Rule 17Ad–22(e)(4)(ii)[17] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. The proposed changes promote ICC's ability to address and manage the risk posed by Non-Participant Parties, including by clarifying that the amount of Non-Participant Collateral would be commensurate with the risk presented by such Non-Participant Party and by directing Participants to identify Non-Participant Parties with heightened risk profiles and collect margin from them at a level exceeding ICC's margin requirement. In ICC's view, the amended language in Rule 406(b) protects the financial integrity of ICC and Participants, as it results in Participants collecting Non-Participant Collateral in an amount commensurate with the risk presented by Non-Participant Parties and is more appropriate in light of amended Regulation 39.13(g)(8)(ii).[18] Such changes promote ICC's ability to manage the risks posed by Non-Participant Parties, including by managing the potential risks arising from Non-Participant Party transactions relating to a potential default of a Non-Participant Party that disrupts a Participant, thereby promoting ICC's ability to continue to maintain its financial resources and withstand the pressures of defaults, consistent with the requirements of Rule 17Ad–22(e)(4)(ii).[19]

Rule 17Ad–22(e)(6)(i) and (ii)[20] require each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances. As described above, the proposed revisions are intended to clarify the existing requirement in Rule 406(b) and to incorporate terminology that is consistent with amended CFTC Regulation 39.13(g)(8)(ii)[21] to facilitate compliance. Such revisions do not change ICC's margin methodology, which continues to consider, and produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, and do not impact or alter ICC's ability to collect margin or make intraday margin calls. Therefore, ICC believes that the proposed rule change is consistent with the requirements of Rule 17Ad–22(e)(6)(i) and (ii).[22]

Rule 17Ad–22(e)(19)[23] requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities. The proposed amendments support ICC's ability to manage the risks posed by Non-Participant Parties, including by elaborating on the requirement in Rule 406(b) to state that the amount of Non-Participant Collateral would be commensurate with the risk presented by such Non-Participant Party. The proposed changes also include language directing Participants to identify Non-Participant Parties with heightened risk profiles and collect margin from them at a level exceeding ICC's margin requirement to replace general language whereby ICC may require additional margin with respect to Non-Participant Parties. Such changes would replace the requirement in the Circular, which would result in Participants collecting Non-Participant Collateral at levels commensurate with the risk presented by each Non-Participant Party and support ICC's ability to manage the risks posed by Non-Participant Parties given the relationship that Participants have with Non-Participant Parties as opposed to ICC. Such changes also foster a more clear and transparent Rule that will enhance ICC's ability to identify, monitor, and manage the risks posed by Non-Participant Parties, consistent with the requirements of Rule 17Ad–22(e)(19).[24]

(B) Clearing Agency's Statement on Burden on Competition

ICC does not believe the proposed amendments would have any impact, or impose any burden, on competition. The proposed rule change will apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)[25] of the Act and Rule 19b–4(f)(6)[26] thereunder.

ICC has requested that the Commission waive both the five-day pre-filing requirement and the 30-day delayed operative date under Rule 19b–4(6)(iii)[27] so that the proposed rule change may become effective and operative upon filing with the Commission. As noted above, ICC designed the proposed amendments to Rule 406(b) for consistency with amended CFTC Regulation 39.13(g)(8)(ii),[28] which requires ICC's compliance by January 27, 2021. ICC does not believe that any delay in implementing rules that reflect these requirements will benefit Participants, their customers, or any other market

[16] 17 CFR 240.17Ad–22.

[17] 17 CFR 240.17Ad–22(e)(4)(ii).

[18] 17 CFR 39.13(g)(8)(ii).

[19] 17 CFR 240.17Ad–22(e)(4)(ii).

[20] 17 CFR 240.17Ad–22(e)(6)(i) and (ii).

[21] 17 CFR 39.13(g)(8)(ii).

[22] 17 CFR 240.17Ad–22(e)(6)(i) and (ii).

[23] 17 CFR 240.17Ad–22(e)(19).

[24] *Id.*

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] 17 CFR 39.13(g)(8)(ii).

participants. Any delay is also likely to be inconsistent with market expectations in light of the compliance date of the amended CFTC regulation. As a result, in ICC's view, immediate effectiveness is consistent with the protection of investors and the public interest.

The Commission believes that the delay of the operation of the proposed rule change, through the five-day pre-filing requirement and the 30-day delayed operative date, could impede ICC's timely compliance with amended CFTC Regulation 39.13(g)(8)(ii)[29] and thereby defer the intended benefits and objectives of such regulatory requirements for customer initial margin levels. This, in turn, could disrupt market expectations that ICC will implement the amended CFTC regulation by the January 27, 2021 compliance date, which may adversely affect ICC and its ability to timely replace the requirement in the Circular and manage the risks posed by Non-Participant Parties in compliance with applicable regulatory requirements for the collection of Non-Participant Collateral. The Commission therefore believes that waiving the five-day pre-filing requirement and 30-day operative delay should facilitate ICC's timely compliance with the amended CFTC regulation and avert any potential adverse consequences if such compliance were delayed. Moreover, the Commission believes the proposed rule change would not impose any significant burden on competition because it applies uniformly to both FCM and broker-dealer Participants and their customers as Non-Participant Parties. Thus, the Commission believes the proposed rule change, and waiving the five-day pre-filing requirement and 30-day operative delay, would not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) affect the safeguarding of funds or securities in the custody or control of ICC or for which it is responsible. Therefore, the Commission waives the five-day pre-filing requirement and 30-day operative delay, and designates the proposed rule change as 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2021–001 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–ICC–2021–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2021–001 and should be submitted on or before February 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01284 Filed 1–21–21; 8:45 am]

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[29] 17 CFR 39.13(g)(8)(ii).

[30] For purposes only of waiving the five-day pre-filing requirement and the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90925; File No. SR–CBOE–2020–034]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Authorize for Trading Flexible Exchange Options on Full-Value Indexes With a Contract Multiplier of One

January 14, 2021.

On June 30, 2020, Cboe Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to authorize for trading flexible exchange options on full-value indexes with a contract multiplier of one. The proposed rule change was published in the **Federal Register** on July 20, 2020.[3] On September 2, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On October 15, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On January 21, 2021, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 89308 (July 14, 2020), 85 FR 43923 (''Notice''). Comments received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-034/srcboe2020034.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 89743, 85 FR 55717 (September 9, 2020).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 90204, 85 FR 67037 (October 21, 2020).

Exchange submitted Amendment No. 1 to the proposed rule change.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on July 20, 2020.[10] The 180th day after publication of the Notice is January 16, 2021. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates March 17, 2021, as the date by which the Commission shall either approve or disapprove or the proposed rule change (File Number SR–CBOE–2020–034), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01281 Filed 1–21–21; 8:45 am]

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[8] In Amendment No. 1, the Exchange provided additional support for the proposal. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2020-034/srcboe2020034.htm.*

[9] 15 U.S.C. 78s(b)(2).

[10] *See supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90927; SR–NYSEArca–2020–105]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade the Shares of the Teucrium Water Fund Under NYSE Arca Rule 8.200–E, Commentary .02

January 14, 2021.

On November 25, 2020, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares of the Teucrium Water Fund under NYSE Arca Rule 8.200–E, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on December 14, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 28, 2021. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates March 14, 2021 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2020–105).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01283 Filed 1–21–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 90608 (December 8, 2020), 85 FR 80854.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90923; File No. SR–CboeEDGX–2021–002]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to the EDGX Top Feed

January 14, 2021.

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 January 4, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to the EDGX Top Feed. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the fees applicable to the EDGX Top Feed, which is an uncompressed data feed that offers both top-of-book quotations and execution information based on equity orders entered into the System.[3] Specifically, the Exchange proposes to: (1) Increase the fee for internal distribution of the EDGX Top Feed; and (2) introduce Professional User fees for internal Professional Users of the EDGX Top Feed. The current fees for external distribution of the EDGX Top Feed will continue to apply, without change, including various incentive programs that the Exchange has adopted to facilitate the provision of lower-cost market data to retail and other investors.[4]

Market Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5] As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [6]

Equity trading is currently dispersed across sixteen exchanges, including three new U.S. equities exchanges that launched trading in 2020, 32 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing fiercely for order flow. Based on publicly-available information, no single U.S. equities exchange has more than 20% market share.[8] In turn, the market for top-of-book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (''SIPs'') to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public.[9] Top-of-book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top-of-book data, but no rule or regulation of the Commission requires market participants to purchase top-of-book data from an exchange.[10] The EDGX Top Feed therefore competes with the SIP and with similar products offered by other national securities exchanges that offer their own competing market data products. In fact, there are twelve competing products offered by other national securities exchanges today,[11] not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. equities exchanges also offers similar top-of-book data.

Fees for Internal Distribution of the EDGX Top Feed

Currently, the Exchange charges a modest fee of $500 per month for internal distribution of EDGX Top Feed data,[12] *i.e.,* distribution within the distributor's own firm,[13] and does not charge any additional fees for internal distribution based on the number of Professional or Non-Professional Users that receive access to this information. These internal distribution fees have been in place, without change, since early 2015 when the Exchange first began offering the EDGX Top Feed.[14] In the time since, the Exchange has made a number of significant enhancements to its platform, including notably the introduction of priority for retail limit orders,[15] that have resulted in improved trading opportunities for investors and, consequently, more valuable market data.[16]

As discussed, the Exchange now proposes to increase certain fees applicable to firms that consume this data as internal distributors, *i.e.,* firms that use EDGX Top Feed data for internal purposes as opposed to firms that distribute such data externally to its customers. As proposed, the Exchange would increase the monthly charge for internal distribution of EDGX Top Feed data to $750 per month, which would continue to be significantly cheaper than similar products offered by the Exchange's main competitors, including both other national securities exchanges that offer top-of-book data products to their customers as well as the SIPs that provide similar ''core data'' to vendors and subscribers pursuant to Regulation NMS. In addition, the Exchange would introduce Professional User fees for internal Professional Users of the EDGX Top Feed. Those Professional User fees will be the same as the modest fee currently charged for external

[3] *See* EDGX Rule 13.8(c).

[4] *See e.g.,* EDGX Schedule of Fees, EDGX Top, Small Retail Broker Distribution Program; EDGX Schedule of Fees, Financial Product Distribution Program. The Small Retail Broker Distribution Program is a pricing program offered by the Exchange that allows small retail brokers that purchase top-of-book market data from the Exchange to benefit from discounted fees for access to such market data. The Financial Product Distribution Program lowers the cost of distributing Derived Data based upon the Exchange's top-of-book offerings, including Derived Data that is often used by retail investors.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS Adopting Release'').

[6] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, *available at http://markets.cboe.com/us/equities/market_share/.*

[9] *See* Rule 602 of Regulation NMS.

[10] By contrast, Rule 603(c) of Regulation NMS (the ''Vendor Display Rule'') effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

[11] Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE BQT, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, IEX TOPS, MIAX PEARL Equities Top of Market Feed, and MEMX MEMOIR Top.

[12] *See* EDGX Schedule of Fees, EDGX Top, Internal Distribution.

[13] The Exchange's fee schedule defines an Internal Distributor of an Exchange Market Data product as a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *See* EDGX Schedule of Fees, Market Data Fees, Definitions.

[14] *See* Securities Exchange Act Release No. 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09).

[15] *See* Securities Exchange Act Release No. 87200 (October 2, 2019), 84 FR 53788 (October 8, 2019) (SR–CboeEDGX–2019–012) (Approval Order).

[16] The Exchange is also about to extend its early trading hours to begin at 4:00 a.m. ET, which would similarly provide additional value to EDGX Top subscribers who would receive additional information about quotes and trades on EDGX during the Early Trading Session. *See* Securities Exchange Act Release No. 90509 (November 24, 2020), 85 FR 77310 (December 1, 2020) (SR–CboeEDGX–2020–056).

distribution of the EDGX Top Feed, *i.e.,* $4 per month for each Professional User. There would continue to be no charge associated with internal distribution to Non-Professional Users. Further, as discussed, the current fees for external distribution of the EDGX Top Feed would continue to apply, without change, including various incentive programs that the Exchange has adopted to facilitate the provision of lower-cost market data to retail and other investors. As a result, the Exchange believes that the proposed fee changes would allow it to be appropriately compensated for the value of its market data, particularly from professional financial services firms that use that data for internal purposes, while simultaneously ensuring that its data would continue to be available to a wide range of market participants at a cost that facilitates widespread availability of such data.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[17] in general, and furthers the objectives of Section 6(b)(4),[18] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[19] Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,[20] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange operates in a highly competitive environment. Indeed, with the launch of three new national securities exchanges that trade U.S. equity securities last September, there are now sixteen registered U.S equities exchanges, and with the exception of Long-Term Stock Exchange, Inc. (''LTSE''), which has determined to not offer any proprietary market data feeds, each of these exchanges offer associated market data products to their customers, either with or without a fee. The national securities exchanges also compete with the SIPs for market data customers, as much of the information offered to market participants and investors through the EDGX Top Feed is similarly made available to market participants and investors through the SIPs, consolidated with data from each of the other fifteen exchanges. It is in this robust and competitive market in which the Exchange is proposing to modestly increase its fees.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Further, with respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data: ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' [21] The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [22] As discussed in this filing, significant competitive forces constrain the ability of the Exchange to charge supra-competitive fees.

i. The EDGX Top Feed Is an Optional Market Data Product, and the Exchange is Constrained in Its Pricing by Significant Competitive Forces

Subscribing to the EDGX Top Feed is entirely optional. The Exchange is not required to make the EDGX Top Feed available to any customers, nor is any customer required to purchase the EDGX Top Feed. Unlike certain other data products that firms may be required to purchase in order to fulfill regulatory obligations,[23] *e.g.,* the consolidated quotation and last-sale information feeds offered by the SIPs, a customer's decision as to whether to purchase the EDGX Top Feed is entirely discretionary, and is based on that firms individual business needs. Generally, firms that choose to subscribe to the EDGX Top Feed do so because they believe that it is a cost-effective alternative to core data offered by the SIPs that provides valuable information about the market for securities traded on the Exchange, particularly in cases where a consolidated display is not required pursuant to the Vendor Display Rule. Such firms are able to determine for themselves whether the EDGX Top Feed helps them to achieve their business goals, and if so, whether or not it is attractively priced compared to other similar products.

Indeed, if the EDGX Top Feed does not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the EDGX Top Feed. In fact, comparing the number of internal distributors that currently subscribe to the EDGX Top Feed, based on data compiled by the Exchange as of November 2020, to the total number of internal distributors that subscribe to core data offered by the CTA and UTP SIPs, as published on plan websites for Q3 2020,[24] less than 1.9% of internal distributors that purchase U.S. equities data choose to subscribe to the EDGX Top Feed. The EDGX Top Feed therefore represents an insignificant proportion of the relevant market for such market data, and significantly more internal distributors choose not to purchase this product than those that do. Given the insignificant percentage of internal distributors that consume the EDGX Top Feed, it is clear that such firms can and do exercise their right to choose to purchase, or not purchase, this particular market data product.

Although the Exchange is not required to make any data, including top-of-book data, available through its proprietary market data platform, the Exchange believes that making such

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78k–1.

[20] *See* 17 CFR 242.603.

[21] *NetCoalition* v. *SEC,* 615 F.3d 525, 535 (D.C. Cir. 2010) (''*NetCoalition I*'') (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323).

[22] *Id.* at 535.

[23] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See* In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

[24] *See* CTA Quarterly Population Metrics (Q3 2020), *available at https://www.ctaplan.com/publicdocs/ctaplan/CTAPLAN_Population_Metrics_3Q2020.pdf;* UTP Quarterly Population Metrics (Q3 2020), *available at https://www.utpplan.com/DOC/UTP_2020_Q3_Stats_with_Processor_Stats.pdf.*

data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display often choose the SIP to satisfy their top-of-book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor or fintech firm may choose to purchase the EDGX Top Feed, or a similar product from another exchange, in order to perform investment analysis, or to provide general information about the market for U.S. equity securities, respectively. In either case the choice to purchase the EDGX Top Feed would be based on the firm's determination of the value of the data offered by their chosen product compared to the cost of acquiring this data instead of receiving similar data from other sources. The EDGX Top Feed serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all sixteen U.S. equities exchanges. Making alternative products available to market participants ultimately ensures competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees.

Further, in the event that a market data customer views one exchange's top-of-book data product and/or fees as more or less attractive than a competitor's offerings they can and often do switch between competing products. As discussed, much of the top-of-book quotation information and last-sale information offered within the EDGX Top Feed is also available on the SIP feeds, and for firms that do not require a consolidated display, as is typically the case for the subscribers to the EDGX Top Feed, similar top-of-book information is available from a number of competing U.S. equities exchanges.[25] This include a number of large established exchanges that charge for access to such top-of-book data, as well as certain smaller or new exchange entrants that provide similar data without charge, in many cases as a way of attracting customers to their exchange while they seek to grow market share. In this way, the EDGX Top Feed, SIP data products, and other top-of-book products offered by a number of U.S. equities exchanges, are all substitutes. The availability of these substitute products constrains the Exchange's ability to charge supra-competitive prices as market participants can easily obtain similar data from one of the Exchange's many competitors. In fact, the impact of competition on the market in which the EDGX Top Feed is offered to market participants and investors is showcased by the Exchange's other recent fee changes related to this product, which involved the *reduction* of fees to facilitate the Exchange's ability to compete for customers.[26] Distributors can discontinue use of the EDGX Top Feed at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

In setting the proposed fees for the EDGX Top Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. Indeed, the Exchange has no market power and is not in a position to charge unreasonable fees for its top-of-book data as there are a number of competing products in the market, including products that are currently offered free of charge by certain other exchanges that have determined not to charge for their market data. The existence of alternatives to the EDGX Top Feed ensures that the Exchange cannot set unreasonable fees when vendors and subscribers can freely elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

ii. The Proposed Fees Are Reasonable Given the Value of the Data Provided to Customers, and When Compared to Competing Market Data Products

The proposed fees are also reasonable as they represent a modest increase for top-of-book data that has proven valuable for investors, particularly as the Exchange grows market share due to its innovative market model that has been successful in attracting retail limit orders, increasing the Exchange's market share to over 7% consolidated U.S. equities volume.[27] Specifically, the EDGX Top Feed offers competitively-priced alternative to top-of-book data disseminated by SIPs, *i.e.,* core data, for firms that do not need or desire a consolidated display covering all sixteen U.S. equities exchanges, or similar data disseminated by other national securities exchanges. It is purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the EDGX Top Feed benefits a wide range of investors that participate in the national market system. As discussed, the decision to purchase a particular market data product from a particular exchange is largely based on two factors: (1) The quality of the data, and (2) the price charged for access to that data. The Exchange believes that the EDGX Top Feed is competitive on both of these factors.

First, the EDGX Top Feed would remain competitively priced compared to similar products offered by other comparable U.S. equities exchanges and core data offered by the SIPs. Although the EDGX Top Feed is not offered free of charge like certain other competitor offerings, particularly those offered by newer U.S. equities exchanges that are seeking to grow market share, it is made available at a price that is significantly lower than the prices charged by the Exchange's main competitors—*i.e.,* those with comparable market shares and data quality. Notably, even with the proposed fee increase, the EDGX Top Feed would remain significantly cheaper than similar products offered by New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''Arca''), and The Nasdaq Stock Market LLC (''Nasdaq'') both in terms of the fees charged for internal distribution and the fees charge for each Professional User that is provided access to the feed. For example, NYSE charges a total of $3,000 per month for internal distribution of their equivalent products, *i.e.,* $1,500 per month for applicable top-of-book quotation information,[28] and an

[25] Although the Exchange does not have access to the customer lists for other competing products, it understands based on conversations with subscribers to the EDGX Top Feed that they typically view exchange top-of-book products as substitutes and do not generally look to purchase such data from more than one national securities exchange.

[26] *See supra* note 4. The Exchange also notes that while this proposed fee change involves an increase in fees, it is simultaneously filing another proposed fee change to expand its Financial Products Distribution Program and further *reduce* certain fees. *See* SR–CboeEDGX–2021–003 (pending publication).

[27] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, *available at http://markets.cboe.com/us/equities/market_share/.*

[28] *See* NYSE PDP Market Data Pricing, Section 1.3, NYSE BBO.

additional $1,500 per month for transaction information,[29] both of which are included in the EDGX Top Feed for a single fee.[30] Arca, which has a similar pricing model to NYSE, also charges a higher rate of $1,500 per month for internal distribution of its equivalent products, separated into a $750 per month charge for top-of-book quotation information and an additional $750 per month charge for transaction information.[31] Finally, Nasdaq charges its internal distributors a fee of $1,500 per month for Nasdaq Basic, which includes both top-of-book quotation information and transaction information for the same fee, similar to the Exchange's pricing model, but again at a higher cost.[32] In each case, the internal distribution charges associated with obtaining comparable U.S. equities market data from NYSE, Arca, and Nasdaq runs at least double and up to four times as much as the proposed fee to be charged by the Exchange, meaning that the Exchange would continue to be offering its data at a price that is attractive compared to the prices charged by its competitors. Similarly, each of these exchanges charges a fee for each Professional User that is higher than that proposed by the Exchange—*i.e.,* $26 per month for Nasdaq,[33] and $8 per month total for both NYSE and Arca.[34] Finally, the EDGX Top Feed also remains competitively priced compared to core data provided by the SIPs for firms, *e.g.,* buy-side investors or fintech firms, that do not need or desire a consolidated display covering all sixteen U.S. equities exchanges.[35]

Second, the proposed fees are reasonable given the value of the data provided in the EDGX Top Feed and used by data recipients in their profit-generating activities. The EDGX Top Feed provides top-of-book quotations and transactions executed on the Exchange, and provides a valuable window into the market for securities traded on a market that accounts for more than 7% of U.S. equity market volume today.[36] As discussed, the Exchange offers the EDGX Top Feed in a competitive environment where firms may freely choose which market data products best suit their business needs. Invariably, firms that choose to purchase the EDGX Top Feed instead of receiving one of the many free products offered by other exchanges,[37] including free products offered by an affiliate of the Exchange,[38] have decided that the value of the EDGX Top Feed is greater than that offered by those other products. Indeed, by attracting liquidity providing orders, *e.g.,* through retail priority, the Exchange is able to offer market data products that benefit from increased market quality. In turn, investors may choose to rely on those products instead of other competitor offerings based on the value they provide in relation to any additional cost associated with obtaining that market data from the Exchange. The Exchange therefore believes that its proposal is consistent with the principles enshrined in Regulation NMS to ''promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.'' [39]

iii. The Proposed Fees Are Equitable and Not Unfairly Discriminatory as Internal Distributors Will Be Subject to Uniform Pricing Based on Their Usage of the Data

The Exchange believes the proposed fees for internal distribution of the EDGX Top Feed will continue to be allocated fairly and equitably among subscribers, and are not unfairly discriminatory, as the proposed fees will apply equally to all data recipients that choose to subscribe to the EDGX Top Feed and distribute that data to internal subscribers. As proposed, all internal distributors of the EDGX Top Feed will be subject to the same internal distribution fee, regardless of the type of business that they operate, or the use they plan to make of the data feed. Thus, all internal distributors would have access to the EDGX Top Feed on the same equitable and non-discriminatory terms. Similarly, with the introduction of Professional User fees, internal distributors of the EDGX Top Feed will be subject to the same modest fees based solely on the number of Professional Users that each internal distributor has chosen to permission for access to this information. The Exchange does not believe that it is inequitable, or unfairly discriminatory, to charge a fee based on the number of Professional Users within a firm that have access to the EDGX Top Feed as this ensures that firms with the highest usage pay their equitable share for the data.

The Exchange also believes that it is fair and equitable, and not unfairly discriminatory, to continue *not* to charge a fee for internal distribution to Non-Professional Users. The Exchange's fee structure is generally designed to facilitate lower cost access to its market data by retail investors, either through substantially lower User fees for Non-Professional Users, or other incentive programs, such as the Small Retail Broker Distribution Program, which was recently implemented to lower the cost of the Exchange's market data to small broker-dealers that serve retail investors. The Exchange does not anticipate any significant number of Non-Professional Users to receive EDGX Top Feed Data through internal, *i.e.,* within the distributor's firm, as opposed to external distribution, and in the event that certain firms may distribute data internally to Users that qualify as Non-Professional, providing such Users access without any User fees would facilitate the Exchange's overall goals of facilitating access to its data by retail investors, which the Commission has continually found to be consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) Competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top-of-book data is broadly disseminated by both the SIPs and the sixteen U.S. equities exchanges. There are therefore a number of alternative

[29] *See* NYSE PDP Market Data Pricing, Section 1.4, NYSE Trades.

[30] *See supra* note 3 and accompanying text. The Exchange also offers a separate market data product, *i.e.,* EDGX Last Sale, that exclusively provides last sale information. *See* EDGX Rule 13.8(d). However, all of the information contained in the EDGX Last Sale Feed is also made available in the EDGX Top Feed at no additional charge.

[31] *See* NYSE PDP Market Data Pricing, Section 3.3, NYSE Arca BBO; NYSE PDP Market Data Pricing, Section 3.4, NYSE Arca Trades.

[32] *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(c)(1). In addition, Nasdaq also charges distributors a $100 monthly administrative fee. *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 135.

[33] Nasdaq's Professional User fee is divided into Nasdaq issues ($13), NYSE issues ($6.50), and other issues ($6.50) for a total of $26 per month for each Professional User. *See* Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

[34] NYSE and Arca's fees are both broken down into $4 per month for BBO information and an additional $4 per month for Trades information. *See supra* notes 28, 29, and 31.

[35] *See* CTA Schedule of Market Data Charges, *available at https://www.ctaplan.com/pricing;* UTP Fee Schedule, *available at https://utpplan.com/DOC/Datapolicies.pdf.*

[36] *See https://markets.cboe.com/us/equities/market_share/.*

[37] *See e.g.,* Investors Exchange Fee Schedule, Market Data fees.

[38] *See e.g.,* Cboe EDGA Exchange, Inc., Fee Schedule, EDGA Top.

[39] *See* Regulation NMS Adopting Release, *supra* note 5, at 37503.

products available to market participants and investors, including products offered by certain competing U.S. equities exchanges without charge. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper top-of-book data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all internal distributors of the EDGX Top Feed on an equal and non-discriminatory basis. The Exchange therefore believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. To the extent that particular fees would apply to only a subset of subscribers, *e.g.,* Professional versus Non-Professional Users, those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In setting the proposed fees, the Exchange is constrained by the availability of numerous substitute products offered by other national securities exchanges as well as core data offered by the SIPs. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [40] and paragraph (f) of Rule 19b–4 [41] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–CboeEDGX–2021–002 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–CboeEDGX–2021–002. 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–CboeEDGX–2021–002 and should be submitted on or before February 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01280 Filed 1–21–21; 8:45 am]

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[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90931; File No. SR–FICC–2020–803]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of No Objection To Advance Notice To Include Same-Day Settling Trades in the Risk Management, Novation, Guarantee, and Settlement Services of the Government Securities Division's Delivery-Versus-Payment Service, and Make Other Changes

January 14, 2021.

On November 19, 2020, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–FICC–2020–803 (''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] In the Advance Notice, FICC proposes to (1) expand its provision of central counterparty services to include the start leg of certain repurchase agreement (''repo'') transactions, and (2) enable participating FICC members to pair-off and settle certain offsetting obligations, as described more fully below. The Advance Notice was published for public comment in the **Federal Register** on December 29,

[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.*

2020,[4] and the Commission has received no comments regarding the changes proposed in the Advance Notice.[5] This publication serves as notice of no objection to the Advance Notice.

I. The Advance Notice

A. Background

FICC, through its Government Securities Division (''GSD''), serves as a central counterparty (''CCP'') and provider of clearance and settlement services for cash-settled U.S. Treasury securities.[6] Among its services, FICC provides real-time trade matching, clearing, risk management, and netting for repo transactions in U.S. Treasury securities in which all securities delivery obligations are made against full payment (''delivery-versus-payment'' or ''DVP'') (the ''DVP Service'').[7]

DVP repos involve a pair of transactions between two parties. The first transaction (the ''Start Leg'') consists of the sale of securities, in which one party delivers securities in exchange for the other party's delivery of cash. The second transaction (the ''End Leg'') occurs on a date after that of the Start Leg and consists of the repurchase of securities, in which the obligations to deliver cash and securities are the reverse of the Start Leg. The parties agree to the terms of the trade, including the specific securities, principal amount, interest rate, haircut, and date of maturity (*i.e.,* either overnight or term).

A DVP repo that is scheduled to start one or more business days after the submission of trade details to FICC is a ''forward starting'' repo. A DVP repo that is scheduled to start on the same business day as trade details are submitted to FICC is a ''same-day starting'' repo. For forward starting repos, FICC acts as CCP for both the Start Leg and the End Leg. However, since the inception of the DVP Service, for same-day starting repos, FICC generally has acted as CCP for the End Leg only.[8] Although FICC does not currently novate the Start Leg of same-day starting repos, FICC collects margin from the parties for the End Leg on the scheduled settlement date of the Start Leg.[9] Currently, the parties to a same-day starting repo settle the Start Leg bilaterally outside of FICC.

The first step in the clearance and settlement process of a DVP repo is for the parties to submit the trade details to FICC.[10] Upon receipt, FICC validates the trade details in a procedure referred to in FICC's Rules as ''Trade Comparison,'' which culminates in the legally binding and enforceable contract between FICC and the parties to the trade.[11] There are different types of Trade Comparisons, depending on which entity submits the trade details to FICC, and the procedures, timing, and other applicable operational arrangements vary depending on the type. For example, a Bilateral Comparison occurs when the individual FICC members that are the parties to a trade each submit trade details to FICC.[12] A Demand Comparison occurs when an Inter-Dealer Broker (''IDB'') or qualifying non-IDB repo broker[13] (each, a ''Repo Broker'') submits trade details to FICC on behalf of both parties to a trade.[14]

FICC generally novates and guarantees settlement of a trade upon Trade Comparison.[15] Additionally, on a daily basis, FICC aggregates and matches a member's offsetting obligations resulting from the member's trades, thereby netting the member's total daily settlement obligations.[16] In the DVP Service, such netting takes place the night before the scheduled settlement date of whichever leg of the repo would settle on the following business day.[17]

Trades that settle bilaterally outside of FICC do not have the benefit of FICC's CCP services, and therefore, such trades can be subject to greater risk of settlement fails.[18] Moreover, trades facilitated by a Repo Broker that settle outside of FICC require multiple bilateral securities movements between the parties to the trade and the Repo Broker. The greater the number of bilateral securities movements involved in trade settlement, the greater the potential for operational risk resulting in settlement fails. If the Start Leg of a DVP repo submitted by a Repo Broker fails to settle on the original scheduled settlement date, FICC currently steps in that evening as CCP and assumes

[4] Securities Exchange Act Release No. 90736 (December 21, 2020), 85 FR 85743 (December 29, 2020) (File No. SR–FICC–2020–803) (''Notice of Filing'').

[5] On November 19, 2020, FICC also filed a related proposed rule change (SR–FICC–2020–015) (''Proposed Rule Change'') with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder. *See* 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 respectively. The Proposed Rule Change was published in the **Federal Register** on December 8, 2020. Securities Exchange Act Release No. 90551 (December 2, 2020), 85 FR 79051 (December 8, 2020). In the Proposed Rule Change, FICC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. The comment period for the related Proposed Rule Change filing closed on December 29, 2020, and the Commission received no comments. As the proposals contained in the Advance Notice were 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.

[6] FICC is composed of two divisions: GSD and the Mortgage-Backed Securities Division (''MBSD''). GSD provides real-time trade matching, clearing, risk management, and netting for trades in U.S. government debt issues. MBSD provides real-time automated trade matching, trade confirmation, risk management, netting, and electronic pool notification to the mortgage-backed securities (''MBS'') market. The Advance Notice deals solely with proposed changes to the GSD Rulebook (''Rules''), which are *available at http://www.dtcc.com/legal/rules-and-procedures.*

[7] In addition to the DVP Service, FICC also provides such services to facilitate trading other types of repos. FICC's General Collateral Finance (''GCF'') Repo® Service enables members to trade general collateral finance repos based on rate, term, and underlying product throughout the day on a blind basis. *See* Rule 20—Special Provisions for GCF Repo Transactions, *supra* note 6. FICC's Centrally Cleared Institutional Triparty (''CCIT'') Service enables trading of tri-party repos between members that participate in the GCF Repo Service and members that are institutional cash lenders (other than investment companies registered under the Investment Company Act of 1940, as amended). *See* Rule 3B—CCIT Service, *supra* note 6. Unlike the DVP Service, the GCF Repo and CCIT Services settle via the triparty platform of a clearing bank. This Advance Notice proposes changes specific to the DVP Service.

[8] There is one limited scenario in which FICC currently acts as CCP for the Start Leg of a brokered same-day starting repo. Specifically, if the Start Leg fails to settle on its original scheduled settlement date, FICC currently assumes responsibility for settlement of the Start Leg on the evening of the original scheduled settlement date. *See* Notice of Filing, *supra* note 4 at 85744.

[9] *See* Notice of Filing, *supra* note 4 at 85744, 50.

[10] Trade details may be submitted to FICC by, or on behalf of, a member in a form, manner, and timeframe prescribed by FICC's Rules. *See* Rule 5—Comparison System, *supra* note 6.

[11] *Id.*

[12] *See* Rule 6A—Bilateral Comparison, *supra* note 6.

[13] For purposes of the Advance Notice, both IDBs and non-IDB repo brokers are FICC members. A qualifying non-IDB repo broker is one that FICC has determined: (1) Operates as a broker with regard to activity in a segregated repo account, and (2) agrees and participates in FICC's repo netting service in the same manner as an IDB that participates in the service. *See* Rule 1—Definitions, *supra* note 6.

[14] *See* Rule 6B—Demand Comparison, *supra* note 6.

[15] *See* Rule 5—Comparison System, *supra* note 6.

[16] *See* Rule 11—Netting System, *supra* note 6.

[17] *See* Notice of Filing, *supra* note 4 at 85745–46.

[18] There are several risk factors inherent to trades that clear bilaterally as opposed to trades that clear through a CCP. For example, the credit risk associated with bilaterally cleared trades remains with the original counterparties, who might not utilize robust and transparent margin requirements, multilateral netting, emergency liquidity and loss sharing arrangements, or other risk mitigation measures. *See* U.S. Department of the Treasury Report, *A Financial System That Creates Economic Opportunities: Capital Markets* at 78, 81 (October 2017), *available at https://www.treasury.gov/press-center/press-releases/documents/a-financial-system-capital-markets-final-final.pdf; Joint Staff Report: The U.S. Treasury Market* at 55 (October 15, 2014), *available at https://www.treasury.gov/press-center/press-releases/Documents/Joint_Staff_Report_Treasury_10-15-2014.pdf;* Treasury Market Practices Group, *White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities* at 2–4 (July 11, 2019), *available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CS_FinalPaper_071119.pdf.*

responsibility for settling the trade.[19] This process may involve FICC receiving securities from the failing party or netting the settlement obligations arising from the Start Leg against those of the End Leg of the same or another repo. FICC states that although its current process of centralizing the settlement of such failed Start Legs decreases further settlement risk, the current process is operationally inefficient because it does not eliminate the multiple securities movements that give rise to the risk of settlement fails.[20]

B. Proposed Same-Day Settling Service

FICC states that its members have expressed an interest in FICC acting as CCP for the Start Leg of same-day starting repos.[21] In the Advance Notice, FICC proposes to modify its Rules to include the Start Leg of same-day starting repos in the risk management, novation, guarantee, and settlement services of the DVP Service (the ''Same-Day Settling Service''). Upon Trade Comparison, FICC would act as CCP for the Start Leg of same-day starting repos, which would settle on the same business day. FICC's margin collection with respect to the trade would not change from the current process. After FICC's novation, if the Start Leg were to fail, the parties' obligations to and from FICC would go through the netting process that evening, and FICC would continue to apply the margin amounts collected with respect to the trade towards FICC's risk management of the End Leg.

FICC believes that the Same-Day Starting Service could increase settlement efficiencies and decrease settlement risk because it would eliminate the movement of securities between members by centralizing the settlement of the Start Leg of same-day starting repos with FICC.[22] Moreover, for same-day starting repos submitted by Repo Brokers, the Same-Day Settling Service would remove the Repo Broker from the settlement process by eliminating the multiple bilateral securities movements involved in the settlement of the Start Leg.

1. Voluntary for Repo Brokers; Mandatory for Other Members

As proposed in the Advance Notice, participation in the proposed Same-Day Settling Service would be voluntary for Repo Brokers. Repo Brokers often provide a suite of services to their clients, including facilitating the bilateral settlement of the Start Leg of same-day starting repos. FICC states that a requirement on Repo Brokers to participate in the Same-Day Settling Service could disrupt the current service offerings from Repo Brokers to their clients.[23] Since Repo Brokers submit trade details to FICC on behalf of both parties to a trade, a Repo Broker opting out of the Same-Day Settling Service would simply result in settlement of the Start Leg bilaterally outside of FICC, as is done currently. FICC believes that providing optionality would allow Repo Brokers and their clients to determine whether a Repo Broker should participate in the Same-Day Settling Service.[24] For participating Repo Brokers, FICC would no longer assume responsibility for a failed Start Leg because FICC would already be acting as CCP for the Start Leg upon Trade Comparison.

For FICC's members that are not Repo Brokers, participation in the Same-Day Settling Service would be mandatory. Unlike Repo Brokers, FICC's individual members submit trade details with respect to their own side of a trade only, such that Trade Comparison only occurs after FICC validates the trade details submitted by both parties to the trade.[25] Accordingly, if one party to a same-day starting repo could choose to opt out of the Same-Day Settling Service, FICC would not be able to act as CCP with equal and opposite settlement obligations between the two parties. Such trades would, therefore, need to settle outside of FICC as they do currently. However, unlike the clients of a Repo Broker, such members would not know in advance whether any given Start Leg would settle with FICC as CCP or bilaterally outside of FICC. By requiring such members to participate in the Same-Day Settling Service, members would have certainty that their Compared Trades would settle with FICC acting as CCP.

2. As-Of Trades

For purposes of the Advance Notice, same-day starting repos would include As-Of Trades,[26] in which a member submits a DVP repo for comparison on the business day after the scheduled settlement date for the Start Leg, and the End Leg is the current business day or thereafter. FICC states that members occasionally submit As-Of Trades due to human or operational errors.[27] FICC further states that it included As-Of Trades in the Advance Notice in order to reasonably include as many variations of same-day starting repos as possible to ensure that FICC would provide consistent settlement processing for all same-day starting repos.[28]

Currently, the Start Leg of an As-Of Trade settles outside of FICC. An End Leg scheduled to settle on the current business day also settles outside of FICC. However, an End Leg scheduled to settle on a date after the current business day settles with FICC acting as CCP. As proposed in the Advance Notice, FICC would act as CCP with respect to both the Start and End Legs of a same-day starting repo, regardless of the timing of the respective scheduled settlement dates.

3. Settlement at Contract Value or System Value

As mentioned above, netting in the DVP Service occurs the night before the scheduled settlement date. Because settlement of Start Legs within the Same-Day Settling Service would occur on the same business day as Trade Comparison, such transactions would generally not be netted.[29] Instead, FICC would settle such transactions on a trade-for-trade basis. Transactions that FICC settles on a trade-for-trade basis (*i.e.,* transactions that are not netted) settle at ''Contract Value,'' which means the dollar value at which the transaction is to be settled on the scheduled settlement date.[30] Transactions that settle on a future date (*i.e.,* transactions that are netted) settle at ''System Value,'' which includes accrued interest. For consistency with the foregoing, FICC proposes to clarify the Rules with respect to the Same-Day Settling Service to reflect that any leg of a DVP repo to be settled on a trade-for-trade basis would settle at Contract Value, whereas any leg to be settled on a future date would settle at System Value.[31]

[19] *See* Section 5, Rule 19—Special Provisions for Brokered Repo Transactions, *supra* note 6.

[20] *See* Notice of Filing, *supra* note 4 at 85744.

[21] *Id.*

[22] *See* Notice of Filing, *supra* note 4 at 85744, 49–50.

[23] *See* Notice of Filing, *supra* note 4 at 85746.

[24] *Id.*

[25] See Rule 6A—Bilateral Comparison, supra note 6.

[26] See Rule 1, *supra* note 6.

[27] *See* Notice of Filing, *supra* note 4 at 85745.

[28] *Id.*

[29] The Start Leg of same-day starting repos would be netted in the limited scenario of a brokered repo settlement fail on the scheduled settlement date. *See supra* note 8; Notice of Filing, *supra* note 4 at 85744.

[30] *See* Rule 1—Definitions, *supra* note 6.

[31] For example, for an overnight repo that is an As-Of Trade, both legs would settle at Contract Value because both would settle on the date of Trade Comparison and therefore would not be netted. For an overnight repo that is a same-day starting repo, the Start Leg would settle on the date of Trade Comparison at Contract Value, whereas the End Leg would be netted that evening and settle the following business day at System Value. For an overnight repo that is forward starting (*i.e.,* both

4. Late-Day Compared Trades

FICC states that members occasionally execute same-day starting repos after the close of the Fedwire Securities Service (''Fedwire''), which is the service that members generally use for settling bilateral securities obligations.[32] Currently, such trades settle bilaterally between the parties outside of FICC, provided that both parties use the same clearing bank for settlement. In the Advance Notice, FICC proposes to include such late-day trades in the Same-Day Settling Service (*i.e.,* FICC proposes to act as CCP for the Start Leg) on a reasonable efforts basis, meaning that FICC would attempt to contact the parties to the trade and FICC's clearing bank to confirm agreement to settle the trade.[33]

Specifically, for members that clear at FICC's clearing bank, FICC would attempt to settle any same-day starting repos that are compared between 3:01 p.m. and 5:00 p.m., provided that (1) FICC is able to contact the parties to the trade and FICC's clearing bank, and (2) the parties and FICC's clearing bank agree to settle the trade. For members that do not clear at FICC's clearing bank, FICC proposes to attempt to settle, on a reasonable efforts basis, same-day starting repos that are compared during the Fedwire reversal period between 3:01 p.m. and 3:30 p.m., provided that (1) FICC is able to contact FICC's clearing bank and the parties to the trade, (2) FICC's clearing bank and the parties to the trade confirm agreement to settle the trade, and (3) FICC's clearing bank, the member's clearing bank, and the Federal Reserve Bank of New York each permit settlement of the trade.

5. Other Changes to FICC's Rules To Incorporate the Same-Day Settling Service

In the Advance Notice, FICC proposes changes to several Rule provisions to ensure the relevant applicability of such provisions to the Same-Day Settling Service. FICC proposes to add a newly defined term ''Same-Day Settling Trade'' to capture the universe of DVP repos that would be covered by the Same-Day Settling Service. FICC proposes to modify the definitions of ''Deliver Obligation'' and ''Receive Obligation'' to include references to Same-Day Settling Trades. FICC proposes to modify the definitions of ''Settlement Value'' and ''System Value'' to contemplate that Same-Day Settling Trades could settle at Contract Value or System Value, depending on the circumstances of the trade, as described above.

FICC proposes to incorporate Same-Day Settling Trades into the existing Rule provisions governing the Comparison System and Netting System. FICC proposes to add Rule provisions addressing eligibility requirements for Same-Day Settling Trades to qualify for FICC's novation and settlement guarantee. FICC proposes to incorporate Same-Day Settling Trades into the Rule provisions governing how parties satisfy their obligations to FICC, including trades that become uncompared or canceled. FICC proposes to incorporate Same-Day Settling Trades into the Rule provisions dealing with settlement fails. Finally, FICC proposes to include appropriate cross-references to ensure that various Rule provisions related to general securities settlement apply to Same-Day Settling Trades.

C. Proposed Pair-Off Service

Settlement fails occur because one party does not have inventory to settle with the other party on the scheduled settlement date. Currently, a member's obligations that remain unsettled when the Fedwire closes go through FICC's overnight netting system for settlement the following business day, and the member is subject to FICC's fails charge.[34] In a scenario where a member has offsetting unsettled failed obligations in the same security (*i.e.,* separate failed obligations to both deliver and receive the same security) after the close of the Fedwire, those obligations currently go through the overnight netting system for settlement the following day.

In the Advance Notice, FICC proposes an optional service for members whereby FICC would pair-off a member's offsetting failed securities settlement obligations each day, beginning at 3:32 p.m. (shortly after the Fedwire closes) until 4:00 p.m. (the ''Pair-Off Service''). Additionally, the member would receive either a debit or credit, as applicable, to account for any difference in the settlement value of its deliver and receive obligations as part of FICC's intraday funds-only settlement (''FOS'') process. Therefore, the proposed Pair-Off Service would enable participating members to settle their obligations on the day they arise, rather than continuing to the next day as unsettled failed obligations, as they would under the current practice. Failed obligations that remain unsettled overnight present market risk exposure to both FICC and the parties to such trades. FICC believes that by enabling the earlier settlement of a member's offsetting obligations, the proposed Pair-Off Service could reduce such overnight market risk.[35]

FICC proposes to start the Pair-Off Service at approximately 3:32 p.m., and provide FOS banks with their intraday net FOS figures by 4:00 p.m. for acknowledgement by 4:30 p.m. Accordingly, FICC proposes to change the timing of FOS processing from the current time of 3:15 p.m. to 4:30 p.m. to enable FICC to settle any net money differences that would arise from the proposed Pair-Off Service.

II. Discussion and Commission Findings

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.[36]

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.[37] 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):[38]

- 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

legs would settle on dates in the future), both legs would be subject to netting and settle at System Value. Notice of Filing, *supra* note 4 at 85746.

[32] The Fedwire is a service provided by the Federal Reserve Banks that includes settlement and transfer of DVP securities transactions. The Fedwire operates daily from 8:30 a.m. to 3:30 p.m. (All times herein are Eastern Time.) *See Fedwire and National Securities Service,* Federal Reserve Bank of New York (March 2015), *available at https://www.newyorkfed.org/aboutthefed/fedpoint/fed43.html; Fedwire Securities Service,* Board of Governors of the Federal Reserve System (July 31, 2014), *available at https://www.federalreserve.gov/paymentsystems/fedsecs_about.htm.*

[33] *See* Notice of Filing, *supra* note 4 at 85748.

[34] *See* Section 14, Rule 11—Netting System, *supra* note 6.

[35] *See* Notice of Filing, *supra* note 4 at 85749–50.

[36] *See* 12 U.S.C. 5461(b).

[37] 12 U.S.C. 5464(a)(2).

[38] 12 U.S.C. 5464(b).

risk management and default policies and procedures, among others areas.[39]

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'').[40] 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.[41] 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 in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposals in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act[42] and in the Clearing Agency Rules, in particular Rule 17Ad–22(e)(21).[43]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act because the changes proposed in the Advance Notice are consistent with reducing systemic risks, supporting the stability of the broader financial system, promoting robust risk management, and promoting safety and soundness.[44]

The Commission believes that the proposals in the Advance Notice are consistent with the principles of reducing systemic risk and supporting the stability of the broader financial system. When a CCP novates a trade and takes offsetting and guaranteed positions between the two original parties to the trade, the length of time from novation to trade settlement may affect the CCP's exposure to credit, market, and liquidity risk. For example, settlement fails extend the time to settlement and can thereby present risk to the CCP that a member's positions and other resources that the CCP holds (generally, the member's margin) decline in market value as the CCP considers whether and how it might liquidate, transfer, or otherwise dispose of such assets to minimize losses. Settlement fails can also affect the amount of liquidity risk a CCP may need to bear for purposes of settling an unsettled trade because CCPs may rely on incoming payments from some members to facilitate payments to other members. For FICC's members, a settlement fail on a securities delivery obligation causes the non-failing party to withhold payment while settlement is rescheduled for the following business day and until the trade ultimately settles. In the interim, the non-failing party cannot use the securities, which it may have already committed to deliver in subsequent trading activity, giving rise to the risk of further settlement fails. Also, the failing party does not have use of the cash proceeds from the trade. Settlement fails can, therefore, undermine the liquidity of a well-functioning market, and a member default could lead to the default of other members and market participants as well. Settlement fails can therefore be a source of systemic risk and instability to the broader market.

As described above in Section I.A., FICC currently acts as CCP for only the End Leg of a same-day starting DVP repo. The Start Leg currently settles bilaterally outside of FICC between the parties to the trade. Trades that settle bilaterally outside of FICC are generally exposed to more operational risk and consequently may result in more settlement fails than trades which are novated and risk-managed by FICC in its role as CCP.[45]

By centralizing settlement of the Start Leg of same-day starting repos, the proposal would eliminate the current bilateral settlement of securities between the parties. Once the Start Leg is subject to FICC's settlement guarantee, a settlement fail would be contained between the failing party and FICC. Even if the start leg were to fail, FICC's margin collection and other risk mitigation measures would be in place to protect the non-failing party originally on the other side of the trade. The Same-Day Settling Service would thereby likely reduce the spread of settlement fails to other market participants. As a result, the Commission believes that the Same-Day Settling Service could reduce the risk associated with settlement fails in the DVP repo market. More broadly, by preventing the spread of settlement fails to other market participants, the Same-Day Settling Service also could help reduce systemic risk and support the stability of the broader financial system.

Additionally, as discussed above in Section I.A., trades facilitated by a Repo Broker that settle outside of FICC require multiple bilateral securities movements between the parties to the trade and the Repo Broker. The greater the number of bilateral securities movements involved in trade settlement, the greater the potential for operational risk resulting in settlement fails. FICC currently manages the risk of a failed Start Leg for a brokered repo by assuming responsibility for trade settlement on the evening of the original scheduled settlement date. While this approach decreases further settlement risk, it neither prevents the original settlement fail nor does it eliminate the multiple bilateral securities movements for settling the Start Leg until after a settlement fail. For participating Repo Brokers, the Same-Day Settling Service would eliminate the bilateral securities movements and the associated risk of settlement fails because FICC would novate and guarantee settlement of the Start Leg upon Trade Comparison. As a result, the Commission believes that the Same-Day Settling Service could improve efficiency in the settlement process for brokered DVP repos and thereby reduce the risk of settlement fails.

Finally, as discussed above in Section I.C., the proposed Pair-Off Service would enable participating members to settle their offsetting failed securities settlement obligations each day after the Fedwire closes. FICC's current process is for such failed obligations to go through the evening netting system, with settlement rescheduled for the following business day. The proposed Pair-Off Service represents a more efficient process for resolving failed settlement obligations because settlement would occur on the day they arise, rather than continuing as settlement fails to the next business day. Moreover, failed obligations that remain unsettled overnight present market risk exposure to both FICC and the parties to such trades. By enabling the earlier settlement of a member's offsetting obligations, the proposed Pair-Off Service could reduce such overnight market risk.

For the reasons discussed above, the Commission believes that the proposals in the Advance Notice could minimize the occurrence of settlement fails, reduce associated risks, and improve settlement efficiency. Accordingly, the Commission believes that the proposals

[39] 12 U.S.C. 5464(c).

[40] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). FICC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[41] *Id.*

[42] 12 U.S.C. 5464(b).

[43] 17 CFR 240.17Ad–22(e)(21)(i), (ii), and (iii).

[44] 12 U.S.C. 5464(b).

[45] *See supra* note 18.

in the Advance Notice are consistent with the objectives of reducing systemic risks and supporting the stability of the broader financial system.[46]

The Commission further believes that FICC's proposals in the Advance Notice are consistent with the objectives of promoting robust risk management and promoting safety and soundness. First, as discussed above in Section I.A., FICC currently acts as CCP for the End Leg of same-day starting repos. In that role, FICC risk manages, novates, and guarantees settlement of such trades. The proposed Same-Day Settling Service would expand FICC's role as CCP to include the Start Leg of same-day starting repos, thereby applying FICC's existing risk management standards to such trades. The Commission believes that extending FICC's existing risk management standards in acting as CCP for the Start Leg of same-day settling repos is consistent with the objective of promoting robust risk management.[47]

Additionally, as discussed above in Section I.C., the proposed Pair-Off Service would enable participating members to settle their offsetting failed securities settlement obligations each day, shortly after the Fedwire closes. FICC's current process is for such failed obligations to go through the evening netting system, with settlement rescheduled for the following business day. The proposed Pair-Off Service represents a more efficient process for resolving failed settlement obligations because settlement would occur on the day they arise, rather than continuing as settlement fails to the next business day. As discussed above, failed obligations that remain unsettled overnight present market risk exposure to both FICC and the parties to such trades. By enabling the earlier settlement of a member's offsetting obligations for those members who choose to use the service, the proposed Pair-Off Service could reduce such overnight market risk and protect FICC from sustaining associated losses. Accordingly, the Commission believes that adopting the proposed Pair-Off Service is consistent with the objectives of promoting robust risk management and promoting safety and soundness.[48]

B. Consistency With Rule 17Ad–22(e)(21)

Rule 17Ad–22(e)(21) under the Exchange Act requires each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, and have the covered clearing agency's management regularly review the efficiency and effectiveness of its (i) clearing and settlement arrangements, (ii) operating structure, including risk management policies, procedures and systems, and (iii) scope of products cleared or settled.[49]

As discussed above in Section I.B, the proposed Same-Day Settling Service would eliminate bilateral settlements between the parties to the Start Leg of a DVP repo and allow FICC to settle both the Start and End Legs of a DVP Repo. In that regard, the proposed Same-Day Settling Service represents a more efficient and effective settlement process than FICC's current process, which generally includes bilateral settlement of the Start Leg. FICC designed the Same-Day Settling Service in response to requests from its members, to mitigate the operational risk that can result in settlement fails. As discussed above, if not contained, settlement fails can spread to other market participants and undermine the liquidity of a well-functioning market.[50] In contrast, reducing the occurrence of settlement fails (and their resultant effects) would strengthen broader market liquidity. Therefore, by reducing the risk of settlement fails, the proposal would benefit FICC's members when it results in transactions that settle on time that might have otherwise failed, with lower overall transaction costs. Accordingly, the Commission believes that adopting the proposed Same-Day Settling Service would be consistent with Rule 17Ad–22(e)(21)[51] because the proposal would broaden the scope of the DVP Service to include the Start Leg of same-day starting repos in a manner designed to be efficient and effective in reducing settlement fails to the benefit of FICC's members and the broader DVP repo market.

Moreover, as discussed above in Section I.C, the proposed Pair-Off Service would enable participating members to settle their offsetting failed securities settlement obligations each day, shortly after the Fedwire closes. Under FICC's current process, such failed obligations go through the evening netting system, with settlement rescheduled for the following business day. The proposed Pair-Off Service represents a more efficient process for resolving failed settlement obligations because settlement would occur on the day the obligations arise, rather than continuing as settlement fails to the next business day. As discussed above, failed obligations that remain unsettled overnight present market risk exposure to both FICC and the parties to such trades. By enabling earlier settlement of a member's offsetting obligations, the proposed Pair-Off Service could reduce such overnight market risk. Accordingly, the Commission believes that adopting the proposed Pair-Off Service would be consistent with Rule 17Ad–22(e)(21)[52] because the proposal would enable the earlier settlement of a member's offsetting failed obligations in a manner designed to be efficient and effective in reducing overnight market risk to the benefit of FICC's members.

III. 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–FICC–2020–803) and that FICC 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–FICC–2020–015, whichever is later.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–01324 Filed 1–21–21; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11330]

Notice of Department of State Sanctions Actions on Hong Kong Normalization

SUMMARY: The Secretary of State has imposed sanctions on fourteen individuals pursuant to Executive Order 13936, the President's Executive Order on Hong Kong Normalization.

DATES: The Secretary of State's determination regarding the fourteen individuals identified in the **SUPPLEMENTARY INFORMATION** section was effective on December 7, 2020.

FOR FURTHER INFORMATION CONTACT: Taylor Ruggles, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647–7677, email: *RugglesTV@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 4(a)(iii)(A) of E.O. 13936 the

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] 17 CFR 240.17Ad–22(e)(21).

[50] Additionally, when a FICC member fails to meet its settlement obligations, the member incurs FICC's fails charge, which could further impact the member's liquidity. *See* Section 14, Rule 11—Netting System, *supra* note 6.

[51] 17 CFR 240.17Ad–22(e)(21).

[52] *Id.*

Secretary of State, in consultation with the Secretary of the Treasury, or the Secretary of the Treasury, in consultation with the Secretary of State may authorize blocking of all property or interests in property that are in the United States, that hereafter come within the United States, or that are in or hereafter come within the possession or control of any United States person, of any foreign person upon determining that the person is or has been a leader or official of any entity, including any government entity, that has engaged in, or whose members have engaged in, developing, adopting, or implementing the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Administrative Region (the ''National Security Law'').

The Secretary of State has determined, pursuant to section 4(a)(iii)(A) of E.O. 13936, that Wang Chen, Cao Jianming, Zhang Chunxian, Shen Yueyue, Ji Bingxuan, Arken Imirbaki, Wan Exiang, Chen Du, Wang Dongming, Padma Choling, Ding Zhongli, Hao Mingjin, Cai Dafeng, and Wu Weihua, are or have been leaders or officials of an entity, including any government entity, that has engaged in, or whose members have engaged in, developing, adopting, or implementing, the National Security Law, and has approved the Department of Treasury adding them to the Specially Designated and Blocked Persons List (SDN List). All property and interests in property subject to U.S. jurisdiction of these individuals are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

Peter Haas,

Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2021–01276 Filed 1–21–21; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice 11329]

Notice of Department of State Sanctions Actions on Hong Kong Normalization.

SUMMARY: The Secretary of State has imposed sanctions on four individuals pursuant to Executive Order 13936, the President's Executive Order on Hong Kong Normalization.

DATES: The Secretary of State's determination regarding the four individuals identified in the **SUPPLEMENTARY INFORMATION** section was effective on November 9, 2020.

FOR FURTHER INFORMATION CONTACT: Taylor Ruggles, Director, Office of Economic Sanctions Policy and Implementation, Bureau of Economic and Business Affairs, Department of State, Washington, DC 20520, tel.: (202) 647 7677, email: *RugglesTV@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 4(a)(iii)(A) of E.O. 13936 the Secretary of State, in consultation with the Secretary of the Treasury, or the Secretary of the Treasury, in consultation with the Secretary of State may authorize blocking of all property or interests in property that are in the United States, that hereafter come within the United States, or that are in or hereafter come within the possession or control of any United States person, of any foreign person upon determining that the person is or has been a leader or official of any entity, including any government entity, that has engaged in, or whose members have engaged in, developing, adopting, or implementing the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Administrative Region (the ''National Security Law''), or in actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong.

The Secretary of State has determined, pursuant to section 4(a)(iii)(A) of E.O. 13936, that Li Jiangzhou, Edwina Lau, and Steve Li Kwai-Wah are or have been leaders or officials of entities, including any government entity, that have engaged in, or whose members have engaged in, developing, adopting, or implementing the National Security Law, and approved the Department of the Treasury adding them to the Specially Designated Nationals and Blocked Person List (SDN List). All property and interests in property subject to U.S. jurisdiction of these individuals are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

The Secretary of State has determined that Deng Zhonghua is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, actions or policies that threaten the peace, security, stability or autonomy of Hong Kong, pursuant to section 4(a)(iii)(A) of E.O. 13936, and approved OFAC adding him to the SDN List. All property and interests in property subject to U.S. jurisdiction of these individuals are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

Peter Haas,

Principal Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 2021–01274 Filed 1–21–21; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 11331]

Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of International Security and Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to the Iran, North Korea, and Syria Nonproliferation Act. The Act provides for penalties on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists, and (c) other items with the potential of making such a material contribution when added through case-by-case decisions.

DATES: Effective January 13, 2021.

FOR FURTHER INFORMATION CONTACT: On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930. For U.S. Government procurement ban issues:

Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079.

SUPPLEMENTARY INFORMATION: On January 13, 2021, the U.S. Government applied the measures authorized in Section 3 of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 109–353) against the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

Ningbo Vet Energy Technology Co., Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Ningbo Zhongjun International Trade Co., Ltd. (NBZJ) (China) and any successor, sub-unit, or subsidiary thereof;

Rim Ryong Nam [DPRK Munitions Industry Department (MID) Official] (North Korean individual in China).

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the U.S. government may procure or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the U.S. government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the U.S. government, except to the extent that the Secretary of State otherwise may determine;

3. No U.S. government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Control Reform Act of 2018 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the U.S. government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise.

Gonzalo O. Suarez,

Acting Deputy Assistant Secretary, International Security and Nonproliferation.

[FR Doc. 2021–01316 Filed 1–21–21; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 11332]

Republic of Cuba Designation as a State Sponsor of Terrorism (SST)

In accordance with section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), and as continued in effect by Executive Order 13222 of August 17,2001, section 620A(a) of the Foreign Assistance Act of 1961, Public Law 87–195, as amended (22 U.S.C. 2371(c)), and section 40(f) of the Arms Export Control Act, Public Law 90–629, as amended (22U.S.C. 2780(f), I hereby determine that the Republic of Cuba has repeatedly provided support for acts of international terrorism.

This notice shall be published in the **Federal Register**.

Dated: January 12, 2021.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2021–01416 Filed 1–21–21; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36480]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

Union Pacific Railroad Company (UP), a Class I railroad, has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) for the acquisition of temporary overhead trackage rights over an approximately 51.7-mile rail line of BNSF Railway Company (BNSF) between milepost 579.3 on BNSF's Creek Subdivision near Mill Creek, Okla., and milepost 631.0 on BNSF's Madill Subdivision near Joe Junction, Tex., pursuant to the terms of a written temporary trackage rights agreement dated December 31, 2020 (Agreement).[1]

UP states that the sole purpose of the temporary trackage rights is to allow UP to move loaded and empty unit ballast trains, which will be used solely for UP maintenance-of-way projects. UP states that the temporary trackage rights will expire on December 31, 2021.

The transaction may be consummated on or after February 7, 2021, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 29, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36480, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on UP's representative, Jeremy Berman, Union Pacific Railroad Company, 1400 Douglas Street, Stop 1580, Omaha, NE 68179.

According to UP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 14, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2021–01355 Filed 1–21–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36466]

San Joaquin Valley Railroad Co.—Lease and Operation Exemption Including Interchange Commitment—Union Pacific Railroad Company

San Joaquin Valley Railroad Co. (SJVR), a Class III railroad, filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease from Union Pacific Railroad Company (UP) and operate 101.5 miles of rail lines (the Lines), specifically: (1) The Westside Branch (Lower Los Banos) from Oxalis, Cal., milepost 159.9 to milepost 181.9,

[1] A copy of the Agreement was filed with the verified notice.

at or near Ingle, Cal.; (2) the Westside Branch (Lower Los Banos) from Ingle, milepost 181.9 to Fresno, Cal., at milepost 207.0 and including the Riverdale Branch from Ingle, milepost 181.8 to the end of the track at or near milepost 206.2 at Burrell, Cal.; (3) the Buttonwillow Branch from Kern Jct., Cal., milepost 316.3 to Gosford, Cal., milepost 322.6; and (4) the Buttonwillow Branch from Gosford, milepost 322.6 to the end of the track at or near Buttonwillow, Cal., milepost 346.3.

According to SJVR, it has entered into a lease with UP (the Lease) to replace a 1994 lease (the Original Lease) between UP's predecessor company, Southern Pacific Transportation Company, and SJVR, as an assignee of Port Railroads, Inc., and that SJVR is currently the operator of the Lines under the Original Lease.[1] SJVR states that it entered the Lease with UPRR on December 28, 2020, to further extend the term of the Original Lease and make other commercial revisions and that SJVR will continue to be the operator after the transaction.

SJVR certifies that the Lease contains an interchange commitment.[2] Accordingly, SJVR has provided additional information regarding the interchange commitment, as required by 49 CFR 1150.43(h).

SJVR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier but also certifies that its revenues currently exceed $5 million. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed $5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, SJVR's verified notice includes a request for waiver of the 60-day advance labor notice requirements. SJVR's waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 29, 2021.

All pleadings, referring to Docket No. FD 36466, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on SJVR's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to SJVR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 15, 2021.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–01356 Filed 1–21–21; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Port R.Rs.—Lease & Operation Exemption—S. Pac. Transp. Co.,* FD 32457 (ICC served Mar. 14, 1994) (authorizing lease of approximately 107.438 miles of line); *San Joaquin Valley R.R.—Corp. Family Transaction Exemption—Port R.Rs.,* FD 32906 (STB served May 3, 1996). According to the verified notice, the milepost designations differ slightly from the Original Lease, reflecting updated mileposts on the Lines.

[2] A copy of the Lease with the interchange commitment was submitted under seal. *See* 49 CFR 1150.43(h)(1).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0037]

Notice of Determination Pursuant to Section 301: Vietnam's Acts, Policies, and Practices Related to Currency Valuation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined that Vietnam's acts, policies, and practices related to currency valuation, including excessive foreign exchange market interventions and other related actions, taken in their totality, are unreasonable and burden or restrict U.S. commerce, and thus actionable under Section 301.

FOR FURTHER INFORMATION CONTACT: For questions concerning the investigation, contact Michael T. Gagain, Assistant General Counsel, 202–395–9529, or Marta M. Prado, Deputy Assistant U.S. Trade Representative for Southeast Asia and the Pacific, 202–395–6216.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

On October 2, 2020, the U.S. Trade Representative initiated an investigation of Vietnam's acts, policies, and practices related to the valuation of its currency pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended (the Trade Act). *See* 85 FR 63637 (Oct. 8, 2020) (notice of initiation). In the notice of initiation, USTR explained that the Government of Vietnam, through the State Bank of Vietnam, tightly manages the value of its currency, and that the State Bank of Vietnam's management of Vietnam's currency is closely tied to the U.S. dollar. USTR also explained that available analysis indicated that Vietnam's currency had been undervalued over the past three years, and that available evidence indicated that Vietnam, through the State Bank of Vietnam, actively intervened in the exchange market, which contributed to the dong's undervaluation in 2019.

The notice of initiation solicited written comments regarding various issues in the investigation. Interested persons filed 66 written submissions in response to the notice of initiation.

In a notice published on November 25, 2020, USTR announced further opportunities for public input. *See* 85 FR 75397 (Nov. 25, 2020) (hearing notice). In the hearing notice, USTR announced that the interagency Section 301 Committee would hold a virtual public hearing on December 29, 2020, and that interested persons could submit post-hearing comments, addressed to any matter raised in the hearing testimony or prior written submissions, by January 7, 2021. In response to an inquiry from certain interested persons, USTR confirmed that post-hearing comments may address the December 16, 2020, Department of the Treasury report on *Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States.* During the public hearing, 21 witnesses provided testimony and responded to questions. USTR received 18 written submissions following the hearing.

The written submissions are publicly available on the docket in this investigation. A transcript of the public hearing is available on the public docket and is posted on USTR's website.

Under section 303 of the Trade Act, the U.S. Trade Representative requested consultations with the Government of Vietnam regarding the issues involved in the investigation. Consultations were held on December 23, 2020.

II. Determination on the Acts, Policies, and Practices Under Investigation

Based on information obtained during the investigation, and in consultation with the Department of the Treasury and other agencies represented on the Section 301 Committee, USTR has prepared and published a comprehensive report on Vietnam's acts, policies, and practices related to the undervaluation of its currency (the Report). The Report, which is posted on the USTR website at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-vietnam,* includes a full discussion on whether the acts, policies, and practices under investigation are actionable under section 301(b) of the Trade Act. The Report supports a finding that Vietnam's acts, policies, and practices related to currency valuation, including excessive foreign exchange market interventions and other related actions, taken in their totality, are unreasonable and burden or restrict U.S. commerce.

In consultation with the Department of the Treasury, based on the information obtained during the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): As described in the Report, Vietnam's acts, policies, and practices related to currency valuation, including excessive foreign exchange market interventions and other related actions, taken in their totality, are unreasonable and burden or restrict U.S. commerce, and thus actionable under Section 301(b) of the Trade Act. In particular:

1. Vietnam's acts, policies, and practices with respect to currency valuation, including excessive foreign exchange market interventions and other related actions, taken in their totality and as discussed in further detail in the Report, are unreasonable in light of U.S. and international norms that exchange rate policy should not be undertaken to gain an unfair competitive advantage in international trade, should not artificially enhance a country's exports and restrict its imports in ways that do not reflect the underlying competitiveness, should not prevent exchange rates from reflecting underlying economic and financial conditions, and should not prevent balance of payments adjustment;

2. Vietnam's acts, policies, and practices that contribute to undervaluation of its currency through excessive foreign exchange market interventions and other related actions burden or restrict U.S. commerce; and, accordingly,

3. The acts, policies, and practices under investigation are actionable under Section 301(b) of the Trade Act.

III. Further Proceedings

Sections 301(b) and 304(a)(1)(B) of the Trade Act provide that if the U.S. Trade Representative determines that an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce, the U.S. Trade Representative shall determine what action, if any, to take under Section 301(b). These matters will be addressed in subsequent proceedings under Section 301.

Juan Millan,

Assistant U.S. Trade Representative for Monitoring and Enforcement, Office of the United States Trade Representative.

[FR Doc. 2021–01352 Filed 1–21–21; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Small Shipyard Grant Program; Application Deadlines

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Small Shipyard Grants Application Deadlines.

SUMMARY: Under the Small Shipyard Grant Program, $19,600,000 is currently available for grants to: (1) Make capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration, and (2) provide training for workers in shipbuilding, ship repair, and associated industries. This notice announces the intention of the Maritime Administration (MARAD) to provide for grants to small shipyards. Federal Assistance Listing Number: 20.814 (formerly known as the Catalog of Federal Domestic Assistance Number). Potential applicants are advised that it is expected, based on experience, that the number of applications will far exceed the funds available and that only a small percentage of applications will be funded. Historically, the program has selected roughly 15–30 applications for funding with an average grant amount of about $1 million.

Timing of Grant Applications

In accordance with the statutory requirement at 46 U.S.C. 54101(f)(1) that applications must be submitted within 60 days of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, December 27, 2020), applications must be received by MARAD by 5:00 p.m. EST on February 25, 2021. Applications received later than this time will not be considered. The Administrator shall award grants under this section not later than 120 days after the date of the enactment of the appropriations Act for the fiscal year concerned.

ADDRESSES: Grant Applications should be sent to the Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Only applicants who comply with all submission requirements described in this notice will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact David M. Heller, Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318, 1200 New Jersey Avenue SE, Washington, DC 20590; phone: (202) 366–5737; or fax: (202) 366–6988.

SUPPLEMENTARY INFORMATION: Grants under MARAD's Small Shipyard Grant Program may not be used to construct buildings or other physical facilities or to acquire land. Grant funds may be used for maritime training programs to foster employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. Grants for such training programs may only be awarded to ''Eligible Applicants'' as described below, but training programs can be established through vendors to such applicants.

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A. Program Description

The Small Shipyard Grant Program was authorized under Section 3501 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), codified at 46 U.S.C. 54101. The statute authorizes the Maritime Administrator to provide assistance in the form of

grants to make capital and related improvements in small shipyards and to provide training for workers in shipbuilding, ship repair, and associated industries. Federal Assistance Listing Number: 20.814 (formerly known as the Catalog of Federal Domestic Assistance Number). The Consolidated Appropriations Act, 2021, appropriated $20,000,000 to the Small Shipyard Grant Program. Per 46 U.S.C. 54101, 2 percent of the funds may be set aside for grant administration. Therefore, the total amount available for grant awards is $19,600,000. The purpose of the Program is to foster efficiency, competitive operations, and quality ship construction, repair, and reconfiguration in small shipyards across the United States in addition to fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries, and grants will be awarded to further this purpose. Award recipients will be expected to comply with the performance goals and reporting requirements as outlined in the executed grant agreement, such as the completion of actions of the capital and related improvement projects or training projects completed.

B. Federal Award Information

Under the Small Shipyard Grant Program, $19,600,000 is available for grants for: (1) Capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (2) training projects that would be effective in fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. MARAD intends to award the full amount of available funding through grants to the extent that there are worthy applications. No more than 25 percent of the funds available will be awarded to shipyard facilities in one geographic location that have more than 600 production employees. MARAD will seek to obtain the maximum benefit from the available funding by awarding grants to as many of the worthiest projects as possible. MARAD may partially fund applications by selecting parts of the total project. The start date and period of performance for each award will depend on the specific project and must be agreed to by MARAD. MARAD will administer each Small Shipyard Grant pursuant to a grant agreement with the Small Shipyard Grant recipient. Amounts awarded as a grant under this notice that are not expended by the recipient shall remain available to the Administrator for use for grants under this program, either in the same or different fiscal year as this notice.

C. Eligibility Information

To be selected for a Small Shipyard Grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project.

1. Eligible Applicants

Section 54101, Title 46, United States Code, provides that shipyards can apply for grants. The shipyard facility for which a grant is sought must be in a single geographic location and may not have more than 1,200 production employees. The applicant must be the operating company of the shipyard facility. The shipyard facility must construct, repair, or reconfigure vessels 40 feet in length or greater for commercial or government use, or construct, repair, or reconfigure vessels 100 feet in length or greater for non-commercial vessels. Refer to section D.5, *Funding Restrictions,* for more information.

2. Cost Sharing or Matching

The Federal funds for any eligible project will not exceed 75 percent of the total cost of such project. The remaining portion of the cost shall be paid in funds from or on behalf of the recipient. Third-party in-kind contributions are not allowed to satisfy the matching requirement. The applicant is required to submit detailed financial statements and supporting documentation demonstrating how and when such matching requirement is proposed to be funded as described below. The recipient's entire matching requirement must be paid prior to payment of any Federal funds for the project. Refer to section D.2 for the documentation required to satisfy the matching requirement.

3. Eligible Projects

Eligible projects include: (1) Capital and related improvement projects that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (2) training projects that will be effective in fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. For capital improvement projects, all items proposed for funding must be new and to be owned by the applicant. For both capital improvement and training projects, all project costs, including the recipient's share, must be incurred after the date of the grant agreement.

4. Requirements for Products Produced in the United States

As expressed in Executive Orders 13788 of April 18, 2017 and 13858 of January 31, 2019, it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States in the terms and conditions of Federal financial assistance awards. Section 3507 of the National Defense Authorization Act for Fiscal Year 2020 included a requirement for Small Shipyard Grantees to comply with Buy America requirements, codified at 46 U.S.C. 54101(d)(2). Subject to few exceptions, these requirements state that no funds may be obligated by MARAD for this program unless each product or material purchased with these funds (including products and materials purchased by a grant recipient), and including any commercially available off-the-shelf item, is:

(i) An unmanufactured article, material, or supply that has been mined or produced in the United States; or

(ii) A manufactured article, material, or supply that has been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

Applications that use grant funds for domestic-content purchases will be viewed more favorably. If a project intends to use any product with foreign content or of foreign origin, this information should be listed and addressed in the application. Applications should expressly address how the applicant plans to comply with domestic-preference requirements. If an applicant anticipates any potential foreign-content issues with its proposed project, applications should demonstrate that the domestic source is not available and how that determination was achieved. If certain foreign content is granted an exception from the Buy America requirements, a Cargo Preference requirement may apply.

D. Application and Submission Information

1. Address To Request Application Package

This announcement contains all the information needed for applicants to apply for this funding opportunity. Applications must include the Standard Form 424 (Application for Federal Assistance), which is available on the

Grants.gov website at *https://www.grants.gov/web/grants/forms/sf-424-family.html.*

2. Content and Form of Application Submission

Although the form is available electronically, the application must be filed in hard copy as indicated below due to the amount of information requested. Applicants must submit an original paper copy of the application, one additional paper copy of the application, and two USB flash drives each containing a complete electronic version of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. A shipyard facility in a single geographic location applying for multiple projects must do so in a single application. The application for a grant must include all the following information as an addendum to the SF–424. The information should be organized in sections as described below:

Section 1: A description of the shipyard including (a) location of the shipyard; (b) a description of the shipyard facilities; (c) years in operation; (d) ownership; (e) customer base; (f) current order book including type of work; (g) vessels delivered (or major projects) over last 5 years; and (h) website address, if any.

Section 2: For each project proposed for funding the following must be included:

(a) A comprehensive detailed description of the project, including a statement of whether the project will replace existing equipment, and if so, the disposition of the replaced equipment.

(b) A description of the need for the project in relation to shipyard operations and business plan and an explanation of how the project will fulfill this need.

(c) A quantitative analysis demonstrating how the project will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, or reconfiguration (for capital improvement projects) or how the project will be effective in fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. The analysis should quantify the benefits of the projects in terms of man-hours saved, dollars saved, percentages, or other meaningful metrics. The methodology of the analysis should be explained with assumptions used, identified, and justified.

(d) A detailed methodology and timeline for implementing the project.

(e) A detailed itemization of the cost of the project together with supporting documentation, including current vendor quotes and estimates of installation costs.

(f) A statement explaining if any elements of the project require action under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) or require any licenses or permits.

Items 2(a) thru 2(f) should be repeated, in order, for each separate project included in the application.

Section 3: A table with a prioritized list of projects with the total cost and Federal government share (in dollars) for each.

Section 4: A description of any existing programs or arrangements, if any, which will be used to supplement or leverage the Federal grant assistance.

Section 5: Shipyard company officer's certification of each of the following requirements:

(a) That the shipyard facility for which a grant is sought is in a single geographic location and (i) the shipyard facility has no more than 600 production employees, or (ii) the shipyard facility has more than 600 production employees, but less than 1,200 production employees (the shipyard officer must certify to either (i) or (ii));

(b) That the applicant has the authority to carry out the proposed project; and

(c) In accordance with the U.S. Department of Transportation's regulation restricting lobbying, 49 CFR part 20, that the applicant has not, and will not, make any prohibited payments out of the requested grant. Certifications are not required to be notarized.

Section 6: Unique entity identifier of shipyard's parent company (when applicable): Data Universal Numbering System (DUNS + 4 number) (when applicable).

Section 7: The most recent year-end audited, reviewed, or compiled financial statements, prepared by a certified public accountant (CPA), per U.S. generally accepted accounting principles (not tax-based accounting financial statements). If CPA prepared financial statements are not available, provide the most recent financial statement for the entity. Do not provide tax returns.

Section 8: Statement regarding the relationship between applicants and any parents, subsidiaries or affiliates, if any such entity is going to provide a portion of the match.

Section 9: Evidence documenting applicant's ability to make proposed matching requirement (*e.g.,* loan agreement, commitment from investors, and cash on balance sheet) and in the timeline outlined in 2(d) above.

Section 10: Pro-forma financial statements reflecting (a) financial condition beginning of period; (b) effect on balance sheet of grant and matching funds (*e.g.* a decrease in cash or increase in debt, additional equity, and an increase in fixed assets); and (c) impact on company's projected financial condition (balance sheet) of completion of project, showing that company will have sufficient financial resources to remain in business.

Section 11: Statement whether during the past five years, the applicant or any predecessor or related company has been in bankruptcy or in reorganization under Chapter 11 of the Bankruptcy Code, or in any insolvency or reorganization proceedings, and whether any substantial property of the applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

Section 12: Consistent with the Department's R.O.U.T.E.S. Initiative (*https://www.transportation.gov/rural*), a strong transportation network is critical to the functioning and growth of the American economy. The nation's industry depends on the transportation network to move the goods that it produces, and facilitate the movements of the workers who are responsible for that production. When the nation's highways, railways, and ports function well, that infrastructure connects people to jobs, increases the efficiency of delivering goods and thereby cuts the costs of doing business, reduces the burden of commuting, and improves overall well-being. Rural transportation networks play a vital role in supporting our national economic vitality. Addressing the deteriorating conditions and disproportionately high fatality rates on our rural transportation infrastructure is of critical interest to the Department, as rural transportation networks face unique challenges in safety, infrastructure condition, and passenger and freight usage. Consistent with the R.O.U.T.E.S. Initiative, the Department encourages applicants to consider how the project will address the challenges faced by rural areas.

Applicants should also state whether a project is located in a Qualified Opportunity Zone designated pursuant to 26 U.S.C. 1400Z–1.

Additional information may be requested as deemed necessary by MARAD to facilitate and complete its review of the application. If such

information is not provided, MARAD may deem the application incomplete and cease processing it.

Section 13: If a project intends to use any product with foreign content or of foreign origin, the application should expressly address how the applicant plans to comply with domestic preference requirements as described in section C.4 of this notice and 46 U.S.C. 54101(d)(2). If an applicant anticipates any potential foreign-content issues with its proposed project, applications should demonstrate that the domestic source is not available and how that determination was achieved.

3. Unique Entity Identifier and System for Award Management (SAM)

MARAD may not make a Small Shipyard Grant award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. Each applicant must be registered in SAM before submitting its application, provide a valid unique entity identifier number in its application, and maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. Applicants may register with the SAM at *www.SAM.gov.* MARAD may not make a Federal award until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not complied with the requirements by the time MARAD is ready to make a Federal award, MARAD may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Dates and Times

Applications must be received by MARAD by 5:00 p.m. EST on February 25, 2021. Applications received later than this time will not be considered. MARAD encourages applicants to submit applications using a carrier and method that will provide proof and time of delivery. The Administrator shall award grants under this section not later than 120 days after the date of the enactment of the appropriations Act for the fiscal year concerned.

5. Funding Restrictions

Grants under MARAD's Small Shipyard Grant Program may not be used to construct buildings or other physical facilities or to acquire land.

Federal award recipients and subrecipients are prohibited from obligating or expending grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115–232 (National Defense Authorization Act 2019).

6. Other Submission Requirements

Applicants must submit an original paper copy of the application, and two USB flash drives each containing a complete electronic version of the application in PDF format to: Associate Administrator for Business and Finance Development, Room W21–318, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

E. Application Review Information

1. Selection Criteria

This section specifies the criteria that MARAD will use to evaluate and award applications for Small Shipyard grants. The criteria incorporate the statutory eligibility requirements for this Program, which are specified in this notice as relevant.

Consistent with the requirements of 46 U.S.C. 54101(b)(1), MARAD will evaluate the applications based on how effective the project will be in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration (for capital improvement projects) or how effective the project will be in fostering employee skills and enhancing productivity related to shipbuilding, ship repair, and associated industries.

As a secondary criterion, higher considerations for award shall be made if applicants' percentage match contribution toward the overall project is greater than the minimum and greater than other competing grant applications.

2. Additional Considerations

(A) Opportunity Zones

MARAD may also consider whether a project is located in a Qualified Opportunity Zone designated pursuant to 26 U.S.C. 1400Z–1.

(B) R.O.U.T.E.S.

Consistent with the R.O.U.T.E.S. Initiative, the Department will consider how the project will address the challenges faced by rural areas under the Small Shipyard Grant Program. Rural transportation networks play a vital role in supporting our national economic vitality. Addressing the deteriorating conditions and disproportionately high fatality rates on our rural transportation infrastructure is of critical interest to the Department, as rural transportation networks face unique challenges in safety, infrastructure condition, and passenger and freight usage. The Department's R.O.U.T.E.S. Initiative can be found at (*https://www.transportation.gov/rural*).

2. Review and Selection Process

MARAD reviews all eligible applications received before the deadline. The Small Shipyard Grant review and selection process consists of three phases: Technical Review, Senior Review, and Final Selection. In the Technical Review phase, a Review Panel made up of technical experts, including naval architects and engineers from MARAD's Office of Shipyards and Marine Engineering, will review all timely applications. Additional input may be provided to the Review Panel on economic issues by the Office of Financial Approvals, on environmental issues by the Office of Environment, and on legal issues by the Office of Chief Counsel. The Review Panel will assign a rating of ''Highly Recommended,'' ''Recommended,'' or ''Not Recommended'' based on how well the applications align with the selection criteria. In addition, higher considerations for award shall be made if applicants' percentage match contribution toward the overall project is greater than the minimum and greater than other competing grant applications.

In the second review phase, the Senior Review Team, which is led by the Maritime Administrator, will consider applications based upon the input of the Review Panel. The Senior Review Team will determine which projects to advance to the Secretary. In the third phase, the Secretary selects projects for final award.

The Department will review and consider applications for funding pursuant to this notice in accordance with the President's September 2, 2020 memorandum, entitled *Memorandum on Reviewing Funding to State and Local Government Recipients of Federal Funds That Are Permitting Anarchy, Violence, and Destruction in American Cities,* consistent with guidance from the Office of Management and Budget and the Attorney General, and with all applicable laws.

3. Federal Awardee Performance and Integrity Information System (FAPIIS) Check

MARAD is required to review and consider any information about the

applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. MARAD will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in section E, and after the required notice to Congress, MARAD will announce awarded projects by posting a list of selected projects at *www.marad.dot.gov/ships-and-shipping/small-shipyard-grants.* Following the announcement, MARAD will contact the point of contact listed in the SF–424 to initiate development of the grant agreement.

2. Administrative and National Policy Requirements

All awards must be administered pursuant to applicable Federal laws, rules, and regulations of MARAD.

Federal wage rate requirements included in Subchapter IV of Chapter 31 of Title 40, United States Code, apply to all projects receiving funds under this Program, and apply to all parts of the project, whether funded with Small Shipyard Grant funds, other Federal funds, or non-Federal funds.

3. Reporting

Each applicant selected for a Small Shipyard capital or training grant will be required to work with MARAD on the development and implementation of a plan to collect information and report on the project's performance with respect to the relevant long-term outcomes that are expected to be achieved through the capital project or training. Performance indicators will not include formal goals or targets, but will require analysis of post-project outcomes, which will inform the Small Shipyard Grant Program in working towards best practices, programmatic performance measures, and future decision-making guidelines.

G. Federal Awarding Agency Contacts

For further information concerning this notice please contact David M. Heller, Director, Office of Shipyards and Marine Engineering, Maritime Administration, Room W21–318, 1200 New Jersey Avenue SE, Washington, DC 20590; phone: (202) 366–5737; or fax: (202) 366–6988. To ensure applicants receive accurate information about eligibility or the Program, you are encouraged to contact MARAD directly, rather than through intermediaries or third parties, with questions.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information you consider to be a trade secret or confidential commercial or financial information, you should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI);'' (2) mark each affected page ''CBI;'' and (3) highlight or otherwise denote the CBI portions. MARAD protects such information from disclosure to the extent allowed under applicable law. In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, MARAD will follow the procedures described in the Department of Transportation FOIA regulations at 49 CFR 7.29. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

(Authority: 46 U.S.C. 54101 and the Consolidated Appropriations Act, 2021, Public Law 116–260, December 27, 2020.)

Dated: January 15, 2021.

By Order of the Chief Counsel in lieu of the Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–01359 Filed 1–21–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2020–0007]

Pipeline Safety: Request for Special Permit; Southern Natural Gas Company, L.L.C.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Southern Natural Gas Company, L.L.C. (SNG). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by February 22, 2021.

ADDRESSES: Comments should reference the docket number for this specific special permit request and may be submitted in the following ways:

- *E-Gov website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://*

www.Regulations.gov. Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION:

PHMSA received a special permit request from SNG seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum allowable operating pressure, and § 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines. This special permit is being requested in lieu of pipe replacement or pressure reduction for six (6) special permit segments of 9,399 feet (1.78 miles) on the SNG pipeline system. The proposed special permit segments are located in Effingham and Harris Counties, Georgia and Clarke County, Mississippi. The SNG pipeline class location in the special permit segments have changed from a Class 1 to a Class 3 location. The SNG pipeline system special permit segments are 20-inch, 24-inch, 26-inch, and 36-inch diameter pipelines with an existing maximum allowable operating pressure of 1,200 pounds per square inch gauge (psig) or 1,250 psig. The installation of the special permit segments occurred between 1958 and 2007.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the SNG pipeline are available for review and public comment in Docket No. PHMSA–2020–0007. We invite interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2021–01326 Filed 1–21–21; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–Q

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1099–Q, Payments from Qualified Education Programs (Under Sections 529 and 530).

DATES: Written comments should be received on or before March 23, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

Requests for additional information or copies of the form(s) and instructions should be directed to Sara Covington, (737)–800–6149 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Payments from Qualified Education Programs (Under Sections 529 and 530).

OMB Number: 1545–1760.

Form Number: 1099–Q.

Abstract: Form 1099–Q is used to report distributions from private and state qualified tuition programs as required under Internal Revenue Code sections 529 and 530.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,689,800.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 811,756.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 2021.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2021–01333 Filed 1–21–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 10, 2021.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Wednesday, February 10, 2021 at 4:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: January 15, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–01375 Filed 1–21–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 9, 2021.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 336–690–6217.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, February 9, 2021, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information please contact Cedric Jeans at 1–888–912–1227 or 336–690–6217, or write TAP Office, 4905 Koger Boulevard, Greensboro, NC 27407–2734 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: January 15, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–01376 Filed 1–21–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 9, 2021.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, February 9, 2021, at 4:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: January 15, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–01373 Filed 1–21–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 9, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Tuesday, February 9, 2021, at 1:30 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: January 15, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–01372 Filed 1–21–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 10, 2021.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Wednesday, February 10, 2021, at 1:30p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: January 15, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–01371 Filed 1–21–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 10, 2021.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Wednesday, February 10, 2021 at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: January 15, 2021.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2021–01377 Filed 1–21–21; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 86 Friday,
No. 13 January 22, 2021

Part II

Federal Deposit Insurance Corporation

12 CFR Parts 303 and 337
Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 337

RIN 3064–AE94; 3064–AF02

Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is finalizing revisions to its regulations relating to the brokered deposits and interest rate restrictions that apply to less than well capitalized insured depository institutions. For brokered deposits, the final rule establishes a new framework for analyzing certain provisions of the ''deposit broker'' definition, including ''facilitating'' and ''primary purpose.'' For the interest rate restrictions, the FDIC is amending its methodology for calculating the national rate, the national rate cap, and the local market rate cap. Further, the FDIC is explaining when nonmaturity deposits are accepted and when nonmaturity deposits are solicited for purposes of applying the brokered deposits and interest rate restrictions.

DATES: *Effective Date:* April 1, 2021; with an extended compliance date of January 1, 2022, as provided in section I(C)(4).

FOR FURTHER INFORMATION CONTACT: Rae-Ann Miller, Senior Deputy Director, (202) 898–3898, *rmiller@fdic.gov,* Division of Risk Management Supervision; or Vivek V. Khare, Counsel, (202) 898–6847, *vkhare@fdic.gov,* Legal Division.

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I. Brokered Deposits

A. Policy Objectives

Significant technological changes have affected many aspects of the banking industry, including the manner in which banks source deposits. For many banks, brokered deposits are an important source of funds, and the marketplace for brokered deposits has evolved in response to technological developments and new business relationships. The FDIC recognizes that its regulations governing brokered deposits are outdated and do not reflect current industry practices and the marketplace. As such, the FDIC initiated an extensive rulemaking process to seek input from stakeholders and to develop new regulations that take into consideration current industry practices and that allow for continued innovation. Banks often collaborate with third parties, including financial technology companies, for a variety of business purposes including access to deposits. Moreover, banks are increasingly relying on new technologies to engage and interact with their customers, and it appears that this trend will continue. Through this rulemaking process, the FDIC attempted to ensure that the brokered deposit regulations would continue to promote safe and sound practices while ensuring that the classification of a deposit as brokered appropriately reflects changes in the banking landscape.

B. Background

1. Historical Statutory Framework

Section 29 of the Federal Deposit Insurance Act (FDI Act) [1] restricts the acceptance of deposits by certain insured depository institutions (or ''IDIs'') from a ''deposit broker.'' Section 29, entitled ''Brokered Deposits,'' was added to the FDI Act by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The law originally restricted troubled institutions (*i.e.,* those that did not meet the minimum capital requirements) from (1) accepting deposits from a deposit broker without a waiver and (2) soliciting deposits by offering rates of interest on deposits that were significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area.[2]

Two years later, Congress enacted the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which added the Prompt Corrective Action (PCA) capital regime to the FDI Act and also amended the threshold for

[1] 12 U.S.C. 1831f (also referred to herein as ''Section 29'').

[2] *See* Public Law 101–73, August 9, 1989, 103 Stat. 183.

the brokered deposit and interest rate restrictions from a troubled institution to a bank falling below the ''well capitalized'' PCA level. At the same time, the FDIC was authorized to waive the brokered deposit restrictions for a bank that is adequately capitalized upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to the institution.[3] Thus, under current law, a ''well capitalized'' insured depository institution is not restricted from accepting deposits from a deposit broker. An ''adequately capitalized'' insured depository institution may accept deposits from a deposit broker only if it has received a waiver from the FDIC.[4] A waiver may be granted by the FDIC ''upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice'' with respect to that institution.[5] An ''undercapitalized'' depository institution is prohibited from accepting deposits from a deposit broker.[6]

In 2018, Section 29 of the FDI Act was amended as part of the Economic Growth, Regulatory Relief, and Consumer Protection Act, to except a capped amount of certain ''reciprocal deposits'' from treatment as brokered deposits.[7]

2. Current Regulations

Section 337.6 of the FDIC's Rules and Regulations implements and closely tracks the statutory text of Section 29, particularly with respect to the definition of ''deposit broker'' and its exceptions.[8] Section 29 of the FDI Act does not directly define a ''brokered deposit,'' rather, it defines a ''deposit broker'' for purposes of the restrictions.[9] Thus, the meaning of the term ''brokered deposit'' turns upon the definition of ''deposit broker.''

Section 29 and the FDIC's implementing regulation define the term ''deposit broker'' to include:

○ Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

○ an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

This definition is subject to the following nine statutory exceptions:

1. An insured depository institution, with respect to funds placed with that depository institution (the ''IDI exception'');

2. an employee of an insured depository institution, with respect to funds placed with the employing depository institution;

3. a trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

4. the trustee of a pension or other employee benefit plan, with respect to funds of the plan;

5. a person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

6. the trustee of a testamentary account;

7. the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

8. a trustee or custodian of a pension or profit sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986; or

9. an agent or nominee whose primary purpose is not the placement of funds with depository institutions (the ''primary purpose exception'').

The statute and regulation also define an ''employee'' to mean any employee: (1) Who is employed exclusively by the insured depository institution; (2) whose compensation is primarily in the form of a salary; (3) who does not share such employee's compensation with a deposit broker; and (4) whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.[10]

In 1992, the FDIC amended its regulations to include the following tenth exception: ''An insured depository institution acting as an intermediary or agent of a U.S. government department or agency for a government sponsored minority or women-owned depository institution program.'' [11]

3. Advance Notice of Proposed Rulemaking

On December 18, 2018, the FDIC Board approved an Advance Notice of Proposed Rulemaking (ANPR), inviting comment on all aspects of the FDIC's brokered deposit and interest rate regulations to obtain input from the public on its brokered deposit and interest rate regulations in light of significant changes in technology, business models, the economic environment, and products since the regulations were adopted.

The ANPR discussed issues with sweep deposits, deposit listing services, statutory exceptions (particularly the primary purpose exception), software products, prepaid cards, and interest rate restrictions applicable to less than well-capitalized institutions (particularly the definition and calculation of the national rate). The ANPR also included historical and statistical analysis, in addition to other information, including the FDIC's experience with brokered deposit questions. The ANPR was published in the **Federal Register** on February 6, 2019.[12] The FDIC received over 130 comments to the ANPR from individuals, banking organizations, non-profits, as well as industry and trade groups, representing banks, insurance companies, and the broader financial services industry.

Of the total comments, 59 related to the FDIC's rules on the interest rate restrictions. The majority of these commenters expressed concerns about the national rate calculation. Concerns included the effect of calculating an average rate by including branches (minimizing the significance of online-focused banks, which have few or no branches) and data issues with banks' published rates. Commenters suggested that to make rates appropriate for different economic environments and maximum transparency, the FDIC should set national rates at the higher of the current rates and the previous (1992) rates based on US Treasury yields. Other comments addressed the local rate, stressing the necessity to compete for particular products within local market areas.

[3] *See* Public Law 102–242, Dec. 19, 1991, 105 Stat 2236.

[4] *See* 12 U.S.C. 1831f.

[5] *See id.*

[6] *See id.*

[7] 12 U.S.C. 1831f(i)(2)(E).

[8] *See* 12 CFR 337.6. The FDIC issued two rulemakings related to the interest rate restrictions under this section. The FDIC is also adopting a final rule for the interest rate restrictions as discussed in Part II of this Notice.

[9] *See* 12 U.S.C. 1831f.

[10] 12 U.S.C. 1831f(g)(4).

[11] *See* 57 FR 23933, 23040 (1992). The FDIC indicated in the preamble for the 1992 final rule that implemented the FDICIA revisions to Section 29 that those revisions were not intended to apply to deposits placed by insured depository institutions assisting government departments and agencies in administration of minority or women-owned deposit programs.

[12] 84 FR 2366 (Feb. 6, 2019).

Comments to the ANPR referring to brokered deposit issues other than interest rate caps focused on the need for clarity, specifically requesting the FDIC to clarify its historical interpretation of the ''deposit broker'' definition and its corresponding statutory and regulatory exceptions. Many commenters stated that the FDIC had interpreted the definition of deposit broker too broadly and had significantly expanded the types of entities considered to be deposit brokers beyond what was originally contemplated when Section 29 was enacted.

Commenters also requested clarity in the deposit broker definition, specifically with the primary purpose exception. Many commenters preferred a bright-line test and noted certain types of deposits are designed for a purpose other than establishing a depository account, provide stable sources of funding, do not have the risks associated with traditional brokered deposits, and, therefore, should meet the primary purpose exception.

Because of the strong interest in both interest rate cap issues and other brokered deposit issues and to better address commenters' concerns, the FDIC decided to issue separate proposed rulemakings, one relating to interest rate caps and the second, relating to proposed changes in the regulations other than those relating to interest rate caps.

4. Overview of Notice of Proposed Rulemaking and Comments Received

In its notice of proposed rulemaking (''Brokered Deposits NPR,'' or, in this Part, ''proposal'' or ''proposed rule''),[13] and in response to comments submitted in response to the ANPR,[14] the FDIC proposed a number of significant changes to its brokered deposit regulation to modernize the regulation in light of technological and other innovations in the way banks source deposits. The FDIC proposed clarifications to the circumstances under which a person [15] meets the deposit broker definition by interpreting when a person is considered to be engaged in the business of ''placing'' or ''facilitating the placement'' of deposits on behalf of its customers. These proposed changes were intended to provide clarity for industry participants as to what types of deposit arrangements would be considered ''brokered'' and which would not. In addition, the FDIC proposed an expansion of the IDI exception to permit wholly owned subsidiaries that meet certain criteria to be eligible for the exception.

The FDIC also proposed an interpretation for the ''primary purpose'' exception to the ''deposit broker'' definition and sought to provide a mechanism through which IDIs or third parties could apply to the FDIC to receive approval for meeting the primary purpose exception. The FDIC proposed that brokered CDs would continue to be considered to be brokered. Finally, the FDIC proposed that existing staff FDIC advisory opinions would either be rescinded if they were no longer applicable under the final rule or codified as part of the final rule if relevant under the new regulation.

The Brokered Deposits NPR solicited comment on all aspects of the proposed rule. The comment period ended on June 9, 2020.[16] In response to the proposal, the FDIC received more than 160 comments from individuals, banking organizations, non-profits, as well as industry and trade groups representing banks, insurance companies, and the broader financial services industry. A number of commenters supported the FDIC's efforts to modernize the rule and provide clarifications to key definitions.

Generally, a common theme amongst the commenters was a desire for the FDIC to provide additional clarification to its proposed changes to the ''deposit broker'' definition and its corresponding statutory and regulatory exceptions. Some commenters suggested that a legislative change to Section 29 was needed, including replacing the brokered deposit restrictions with a restriction on asset growth for less than well capitalized institutions. Commenters also suggested that the FDIC revise certain aspects of the proposal to permit certain types of arrangements that, under the proposal, would continue to be considered to be brokered to instead either fall within an exception or otherwise to be determined to be non-brokered. A small number of commenters opposed the proposed changes, with one commenter stating that the changes would create new loopholes in the statutory restrictions on brokered deposits, threatening safety and soundness of banks and the Deposit Insurance Fund (DIF), without evidence that the changes are necessary and without knowing the impact of the changes. Another commenter criticized the proposal for failing to focus on the underlying risks of brokered deposits and weakening the FDIC's ability to understand deposit volatility and balance sheet risks of supervised IDIs. A summary of comments received on specific aspects of the proposed rule is provided below in section.

C. Final Rule and Discussion of Comments

1. Deposit Broker Definition

Section 29 of the FDI Act provides that a person is a ''deposit broker'' if it is engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties.[17] An agent or trustee also meets the ''deposit broker'' definition when establishing a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.[18]

The statute does not further define the categories that make up the definition of ''deposit broker,'' and the FDIC has authority under the FDI Act to issue regulations to further clarify the types of activities that cause a person to be considered to be a deposit broker.[19] Historically, the FDIC has considered several factors in evaluating whether or not an entity is a ''deposit broker,'' including, for example, whether or not the entity receives fees from IDIs based upon the volume of deposits placed and whether the entity provides marketing or referral services on behalf of the IDIs.

In the Brokered Deposits NPR, the FDIC proposed a new framework for analyzing the deposit broker definition in an effort to provide clarity around when a third party meets the definition. In this context, the FDIC described the circumstances under which a third party would be:

- *Engaged in the business of placing deposits;*
- *engaged in the business of facilitating the placement of deposits;* and
- *engaged in the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties.*

[13] 85 FR 7453 (Feb. 10, 2020).

[14] 84 FR 2366 (Feb. 6, 2019).

[15] This Notice also uses the term ''third party'' in reference to the subject of the ''deposit broker'' definition. Consistent with section 29, this Notice also refers to the potential deposit broker with respect to the primary purpose exception as the ''agent or nominee.''

[16] The comment period was extended for another 60 days to provide commenters with additional time to address the matters raised in the NPR. 85 FR 19706 (Apr. 8, 2020).

[17] 12 U.S.C. 1831f(g)(1)(A).

[18] 12 U.S.C. 1831f(g)(1)(B).

[19] 12 U.S.C. 1819(a)(Tenth).

In general, commenters raised concerns that the proposed deposit broker definition was overly broad and would create barriers to innovation. Commenters also argued that the listed activities in the proposal, specifically in the proposed ''facilitation'' definition, would capture many third party service providers and would prevent community banks from using those providers for any purpose without having the deposits be classified as brokered. Commenters also requested that the definition be further narrowed and that the FDIC identify specific activities in which a person could engage without being a deposit broker. The specific issues raised by commenters are summarized below.

a. Exclusive Deposit Placement Arrangements

Section 29 provides that *a person* meets the ''deposit broker'' definition (as described above) when it is ''*engaged in the business* of placing deposits, or facilitating the placement of deposits, of third parties with *insured depository institutions* or the business of placing deposits with *insured depository institutions* for the purpose of selling interests in those deposits to third parties'' (emphasis added). The FDIC recognizes that a number of entities, including some financial technology companies, partner with one insured depository institution to establish exclusive deposit placement arrangements. Under these arrangements, the third party has developed an exclusive business relationship with the IDI and, as a result, is less likely to move its customer funds to other IDIs in a way that makes the deposits less stable.

As such, in an effort to clarify the types of persons that meet the ''deposit broker'' definition, and consistent with the statute, under this final rule, any person that has an exclusive deposit placement arrangement with one IDI, and is not placing or facilitating the placement of deposits at any other IDI, will not be ''engaged in the business'' of placing, or facilitating the placement of, deposits and therefore will not meet the ''deposit broker'' definition.

This change is also intended to address comments, further described below, that the FDIC would be inundated with applications from banks and third parties seeking the primary purpose exception under the proposed application process.

The FDIC notes, however, that a person that creates or utilizes multiple entities that each place deposits at different IDIs to evade this rule, while still maintaining a relationship with one or more of such entities, will collectively still be viewed as one ''person'' and thus qualify as a deposit broker.

b. Engaged in the Business of Placing Deposits

The statute provides that a person meets the definition of ''deposit broker'' if the person is ''engaged in the business of placing deposits'' on behalf of a third party (*i.e.,* a depositor) at insured depository institutions. As provided in the proposed rule, the FDIC considers a person to be *engaged in the business of placing deposits* if that person has a business relationship with its customers, and as part of that relationship, places deposits with IDIs on behalf of the customer (*e.g.,* acting as custodian or agent for the underlying depositor).

Commenters suggested that the FDIC provide additional clarity to this part of the ''deposit broker'' definition with one commenter suggesting that the FDIC include the description provided above in the final rule text, which the FDIC agrees would provide clarity. As such, the FDIC is amending the ''deposit broker'' definition in the final rule by (1) including that the person must have a business relationship with its customers to be ''engaged in business'' and (2) providing that the person must receive customer funds before placing deposits to satisfy the ''engaged in the business of placing deposits'' part of the definition.

c. Engaged in the Business of Facilitating the Placement of Deposits

In contrast to the first part of the deposit broker definition, the ''facilitation'' part of the definition refers to activities where the person does not directly place deposits on behalf of its customers with insured depository institutions. Historically, the term ''facilitating the placement of deposits'' has been interpreted by staff at the FDIC to include actions taken by third parties to connect insured depository institutions with potential depositors.

Under the proposed rule, a person would meet the ''facilitation'' prong of the ''deposit broker'' definition by, while engaged in business, engaging in any one, or more than one, of the following activities:

- The person directly or indirectly shares any third party information with the insured depository institution;
- The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;
- The person provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account; or,
- The person is acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third party that is placing deposits on behalf of a depositor and an insured depository institution, other than in a purely administrative capacity.

i. Comments in Response to the Proposed ''Facilitation'' Definition

The FDIC sought to provide clarity and consistency with respect to what it means to facilitate the placement of deposits. The proposed ''facilitation'' definition was the issue that received the most comments; of the 166 comment letters received (47 of which were form letters), 118 commented on the proposed definition.

In general, commenters raised concerns that some of the listed activities in the proposal were overly broad and, as proposed, would result in all deposits sourced through some use of third party service providers to be classified as brokered. Some commenters suggested that all ''relationship accounts'' and transaction accounts ''owned by a bank'' with no direct relationship between the third party and the depositor should be exempt from the definition of ''facilitating.'' Below is a summary of the comments received on each of the four prongs of the proposed ''facilitation'' definition.

First Prong. Numerous commenters raised concerns about this first prong of the definition of ''facilitating,'' related to information sharing. Major trade associations representing the banking industry suggested that the FDIC delete the information sharing prong entirely and focus instead on the extent to which a third party exercises control over the account. A law firm commented that the first prong would capture the core activities of essentially every financial technology company or technology platform solutions provider performed for or on behalf of depository institutions, since many financial technology companies receive and store consumers' credentials and share verified consumer information with a depository institution. The commenter expressed that an essential factor underlying the ''facilitation'' activities is whether the person in question is acting on behalf of the bank or on behalf of the depositor. The commenter stated that where a person is acting on behalf of and at the direction of the depositor, that person's activities should not be viewed as ''facilitation'' activities

because no services are being provided to a particular depository institution. One company suggested that the proposed definition of ''facilitating the placement of deposits'' should be revised to exclude third-parties who provide services to banks for the purpose of enabling the bank to establish deposit accounts directly with individual depositors.

A number of commenters, including bankers, a law firm, a trade association, and private companies, raised a specific concern that the ''information sharing'' prong of the definition could be interpreted to include listing services, which historically have been viewed by FDIC staff as excluded from being considered deposit brokers under certain circumstances. Several other bankers expressed similar views, arguing that entities that simply provide information, such as listing services, should not be considered deposit brokers and that the definition as proposed could lead to such a result.

Second Prong. A number of commenters expressed support for the second prong to the proposed ''facilitation'' definition, which included activities where the person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution. Specifically, commenters stated that this activity is indicative of the type of active and meaningful relationship that should be required to find that a third party is facilitating the placement of deposits under the deposit broker definition. One commenter asked that the FDIC limit the second prong to include exclusive legal authority over the movement of funds.

Third Prong. Commenters expressed concerns with the proposed third prong of the facilitation definition, believing that the definition was overly broad, contained unnecessary terms, and would capture services the FDIC did not intend to capture. Some community bankers believed that the proposed third prong would result in classifying service providers that provide assistance (but not the final determination) in setting rates, fees, terms or conditions for various deposit account programs, as deposit brokers. Other commenters mentioned that the phrase ''providing assistance'' was unnecessary and ambiguous and should be deleted from the final rule. The commenters explained that because the proposed rule would cover anyone ''involved in'' setting rates, fees, terms or conditions, the term ''providing assistance'' would only create ambiguity and could be read more broadly.

Some commenters believed that the overly broad definition could include listing services. However, one commenter believed that listing services should be included in the third prong and cited legislative history to support its position. Lastly, commenters mentioned that the definition could be used to capture a bank's use of consulting or advisory services that assist them with developing, delivering and improving their deposit offerings.

Fourth Prong. A number of commenters expressed concerns that the proposed fourth prong of the definition of ''facilitation,'' which excluded persons involved in a purely administrative capacity, was also ambiguous and should be clarified by providing a list of activities that would be considered to be purely administrative. A law firm commented that the FDIC should clarify its intent with respect to the exclusion for ''purely administrative'' conduct, and argued that a third party conducting only administrative functions should be permissible without the third party being considered a deposit broker. A trade association suggested that the FDIC provide that an intermediary between an IDI and a third party placing deposits is not ''facilitating'' if the third party is itself not a deposit broker and if the third party would not be a deposit broker if performing the intermediary's activities itself regardless of whether those activities were ''purely administrative.''

ii. Final Rule Discussion for ''Facilitation'' Definition

The FDIC is adopting the general approach taken in the proposed rule with respect to the ''facilitation'' part of the deposit broker definition, but is making certain revisions to the definition. Under the final rule, a person is engaged in the business of facilitating the placement of deposits if that person is engaged in certain activities with respect to deposits placed at more than one IDI. The activities that result in a person being ''engaged in the business of facilitating the placement of deposits,'' as discussed in the proposed rule, is intended to capture activities that indicate that the third party takes an active role in the opening of an account or maintains a level of influence or control over the deposit account even after the account is open. Having a certain level of influence over account opening, or retaining a level of control over the movement of customer funds after the account is open, indicates that the deposit relationship is between the depositor and the person rather than the depositor and the insured depository institution. Moreover, when a third party can influence a depositor to either open the account with a particular insured depository institution or move funds between insured depository institutions, the deposits tend to be less stable than if the deposits were brought to the insured depository institution through a single point of contact where that contact does not have influence over the movement of deposits between insured depository institutions.

Consistent with this approach to defining the ''facilitating'' part of the deposit broker definition, and in response to issues raised by commenters, the final rule provides that if a person engages in any one of the following activities, while engaged in business, the person will be a deposit broker and any deposits placed by the person will be brokered:

- The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;
- The person is involved in negotiating or setting rates, fees, terms, or conditions for the deposit account; or
- The person engages in matchmaking, as defined in the rule.

Proposed Information Sharing Prong

The FDIC is not retaining the first proposed prong of the ''facilitation'' definition. The FDIC agrees with commenters that the ''direct or indirect sharing of customer information'' is overly broad and could have the unintended effect of capturing persons that do not have influence or control over the placement of deposits. The proposed first prong was generally intended to capture activities where the person shares information in an effort to match prospective depositors with particular banks, and that specific activity, as part of the final rule, will now be included in the matchmaking prong of the facilitation definition discussed below.

Legal Control

The FDIC is finalizing the proposed prong relating to legal control over the account as part of the ''facilitation'' definition. Although one commenter suggested that having legal control of moving customer funds was too broad, many commenters supported this criterion's inclusion in the ''facilitation'' definition. The FDIC believes that the activity clearly demonstrates that a third party has meaningful, substantial influence or control over an account and, therefore, is acting as a deposit broker.

Setting Rates, Terms, Conditions

With respect to the proposed third prong, commenters viewed that *providing assistance* with setting rates, terms, or conditions would be over-inclusive and capture consulting or advisory services that assist banks in improving their deposit offerings. As provided in a staff memorandum to the Brokered Deposits NPR comment file,[20] certain activities such as market research, general consulting or advisory services, and advertising by including a link on a website, were not intended to be included in the third prong of the proposed facilitation definition. As such, the FDIC is revising this prong to clarify that it only includes activities where a third party is negotiating or setting rates, terms, or conditions for a particular deposit product (on behalf of a particular depositor or particular banks).[21] By striking the ''providing assistance'' factor, this revised prong will appropriately capture third parties that influence or control the placement of deposits by negotiating deposit terms between depositors and insured depository institutions.

Providing Matchmaking Services

Finally, the FDIC is incorporating concepts from the proposed first prong (''information sharing'') and the proposed fourth prong with the new third prong to provide a clear description of the types of activities that were intended to be captured under the facilitation definition.

This prong in the final rule will capture persons that engage in matchmaking. The final rule will define matchmaking as follows:

○ A person is engaged in matchmaking if the person proposes deposit allocations at, or between, more than one bank based upon both (a) the particular deposit objectives of a specific depositor or depositor's agent, and (b) the particular deposit objectives of specific banks, except in the case of deposits placed by a depositor's agent with a bank affiliated with the depositor's agent. A proposed deposit allocation is based on the particular objectives of:

○ A depositor or depositor's agent when the person has access to specific financial information of the depositor or depositor's agent and the proposed deposit allocation is based upon such information; and

○ a bank when the person has access to specific information of the deposit-balance objectives of the bank and the proposed deposit allocation is based upon such information.

Specifically, this prong captures certain entities that utilize their relationships with prospective depositors or depositor's agents and banks to propose deposit allocations at particular banks. These activities indicate that the person has influence over the movement of deposits between insured depository institutions. These activities also indicate that the person is not only satisfying the deposit objectives of the depositor or its agent but also of the insured depository institution. Such a relationship could allow less than well capitalized institutions to utilize a third party to bid for considerable volumes of funding, quickly, which could present heightened risks to the DIF. Additionally, such a relationship could increase the likelihood of a third party withdrawing funds from a less than well capitalized institution (or under other circumstances, such as in the event an institution is the subject of an enforcement action), which could present sudden liquidity concerns.

This prong would not include persons that engage in activities that would otherwise satisfy the matchmaking prong if, and to the extent that, these activities are conducted between a bank and an affiliated third party.[22] With respect to this specific function, the FDIC views such services by an intermediary as administrative in nature due to the direct relationship between the person placing the deposits and the bank.[23] However, deposits placed at banks, with the assistance of persons engaging in matchmaking activities, by an affiliated third party that meets the deposit broker definition would be brokered.

This prong will include third parties that engage in matchmaking as part of an unaffiliated deposit sweep program between a depositor, its broker dealer, and various unaffiliated banks. These third parties propose deposit allocations by matching the deposit obligations of either the depositor(s) or the broker dealers with the target deposit balances of various unaffiliated banks. It may be the case that a third party with a primary purpose exception sweeps deposits to an affiliated IDI, and those sweep deposits would not be brokered, while the same third party uses an intermediary that would qualify as a deposit broker under this prong in the placement of deposits at unaffiliated IDIs, in which case those deposits would be brokered.[24]

The third prong will not include third parties that provide administrative services as part of a deposit sweep program between a depositor, its broker dealer, and unaffiliated banks. In these cases, the third party may assist in the placement of sweep deposits with unaffiliated banks but does not propose deposit allocations, as described above.

The third prong is defined to capture specific forms of matchmaking that are active in nature; more passive forms of matching depositors and banks, such as those in which traditional listing services often engage, would not be captured.[25]

Unlike the fourth prong of the proposed rule, the final rule will not distinguish between the activities of a person that interfaces directly with a depositor and the activities of a person that interfaces with an intermediary or a depositor's agent. Rather, the facilitation definition, and its three criteria, will apply, generally, to any third party that plays a role in the flow of funds between a prospective depositor and the opening of a deposit account at an insured depository institution.

Anti-Evasion. It may be possible for an entity that meets the matchmaking prong to modify its business arrangements in such a way that evades the terms of the regulation while maintaining effectively the same business relationships. The FDIC has included in the regulation an anti-evasion provision that would allow the FDIC to determine that such attempts to evade the matchmaking prong still meet the matchmaking prong. The purpose of the anti-evasion authority is not to capture an entity that restructures it business in such a manner that it is no longer engaged in the type of matchmaking captured by the rule, but rather to avoid creating an unintended incentive for entities to modify or restructure businesses solely to evade the regulation. In this regard, the FDIC expects to use this authority sparingly.

[20] *See* FDIC **Federal Register** Citations, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions—Comments and Staff Disclosures, *available at: https://www.fdic.gov/regulations/laws/federal/2020/2020-unsafe-unsound-banking-practices-brokered-deposits-3064-ae94.html.*

[21] In the final rule, this activity will be included in the second prong of the facilitation definition.

[22] For ease of reference, the ''depositor's agent'' in the ''matchmaking'' definition in 12 CFR 337.6(a)(5)(iii)(C) is referred to here as the ''third party''.

[23] This view aligns with the FDIC's intent not to disrupt business arrangements that have existed for a number of years in reliance on prior staff guidance related to affiliate sweep arrangements, when the resulting adjustments to business operations would be solely for the purpose of complying with regulatory changes.

[24] *See* section I(C)(2)(b)(ii)(F) for further discussion of the treatment of additional third parties who may qualify as a deposit broker.

[25] *See* section I(C)(5) for further discussion of listing services.

To provide an example, in the event that a third party that would otherwise satisfy the criteria of the matchmaking prong sells or licenses software that provides deposit placement or allocation services between depositors or banks in a manner that is intended to evade this prong, and continues to play an ongoing role in providing the matchmaking function, the deposits placed through the assistance of the software may be considered brokered. Conversely, in the event that a third party sells or licenses software that provides deposit placement or allocation services between depositors or banks and does not subsequently play an ongoing role in providing any function related to matchmaking, then the deposits placed would not be considered brokered. As such, whether a third party meets the matchmaking prong will, under the anti-evasion provision, depend in part on whether the third party continues to play an ongoing role in providing functions related to matchmaking.

d. Engaged in the Business of Placing Deposits With Insured Depository Institutions for the Purpose of Selling Interests in Those Deposits to Third Parties

i. Overview and Proposal

The third part of the ''deposit broker'' definition includes a person ''engaged in the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties.'' As provided in the proposed rule, this part of the definition specifically captures the brokered certificates of deposit (CD) market (referred to herein as ''brokered CDs''). These are typically deposit placement arrangements where brokered CDs are issued in wholesale amounts by a bank seeking to place funds under certain terms and sold through a registered broker-dealer to investors, typically in fully insured amounts.

ii. Final Rule Discussion of Brokered CDs

In response to the proposal, a commenter clarified that the current brokered CD market operates in a manner different than as described in the notice of proposed rulemaking. Rather than being arrangements in which institutions issue a brokered CD in a wholesale amount in the name of a broker dealer, who then sells participations in the wholesale CD, in current financial markets, an insured depository institution issues a master CD in the name of the third party that has organized the funding of the CD, or in the name of a custodian or a sub-custodian of the third party. The certificate is funded by individual depositors through the third party, with each individual depositor receiving an ownership interest in the certificate that is reflected on the books and records of the third party in a manner to permit pass-through treatment for purposes of deposit insurance for the individual depositors. The FDIC acknowledges that the brokered CD market has evolved, in part, to ensure that its underlying depositors receive pass-through deposit insurance and to allow the beneficial owners of the deposits to trade their accounts in a secondary market maintained by the broker.

Nevertheless, under the final rule, without exception, and as further explained below in the section discussing the primary purpose exception, brokered CDs continue to be classified as brokered. Brokered CDs, which were offered well before Section 29 of the FDI Act was enacted, were specifically intended to be included as part of the statute. Moreover, and as provided in the ANPR, brokered CDs have caused significant losses to the DIF.[26] Regardless of any future innovations and re-structuring in the brokered CD market, the FDIC intends that third parties that assist in the placement of brokered CDs, or any similar deposit placement arrangement with a similar purpose, will continue to be considered deposit brokers under this part of the deposit broker definition.

This final rule revises the proposed definition of a brokered CD in part 303 to more accurately reflect the current marketplace.

2. Exceptions to the ''Deposit Broker'' Definition

Section 29 provides nine statutory exceptions to the definition of deposit broker and, as described earlier, the FDIC established one regulatory exception to the definition. In the proposal, the FDIC proposed amending two exceptions—(1) the exception for an insured depository institution, with respect to funds placed with that depository institution (the ''IDI exception'') and (2) the exception for an agent or nominee whose primary purpose is not the placement of funds with depository institutions (the ''primary purpose exception''). In response to comments, as described below, the final rule makes revisions to both exceptions.

a. Bank Operating Subsidiaries and the IDI Exception

Under the IDI Exception, an IDI is not considered to be a deposit broker when it places (or its employees place) funds at the bank.[27] As provided in the proposed rule, the IDI Exception applies, for example, in the case of a division of an IDI that places deposits exclusively with the parent IDI, but does not apply if a separately incorporated subsidiary of the IDI places deposits exclusively with the parent. However, the FDIC proposed changes to expand the IDI exception to permit wholly owned subsidiaries that meet certain criteria to be eligible for the exception. In doing this, the FDIC recognized that a wholly owned operating subsidiary that meets certain criteria can be considered similar to a division of an IDI for certain purposes.

i. Comments Received in Response to the IDI Exception

Of those who commented on this aspect of the proposed rule, a majority were in favor of the expansion of the exception to include wholly owned subsidiaries. Many also argued that the exception should be further broadened, so as to allow affiliates, in addition to wholly owned subsidiaries, to also fit within the exception (although one commenter expressly stated that it should not be further expanded in this way). Those who argued for further expansion suggested that there is little practical difference between a wholly owned subsidiary and an affiliate and that deposits placed through an affiliate were not ''hot'' money that should be considered to be a brokered deposit. Some commenters also asked the FDIC to clarify how ''dual-hatted'' or ''dual-employees'' would be treated as part of the new regulation.

ii. Final Rule Discussion for the IDI Exception

The final rule is not adopting the proposed changes to the IDI exception. Under this final rule, the deposit broker definition does not include third parties that have an exclusive deposit placement arrangement with one insured depository institution. As a result, the proposed expansion of the IDI exception to wholly owned subsidiaries is no longer necessary. This is because, under the proposal, in order to meet the IDI exception, a wholly owned subsidiary would have to place deposits *exclusively* with the parent IDI among other conditions. As such, wholly owned subsidiaries that would have met the proposed IDI exception

[26] 84 FR 2366, 2370 (Feb. 6, 2019).

[27] 12 U.S.C. 1831f((g)(2)(A)–(B).

will not meet the ''deposit broker'' definition under this final rule because they have an exclusive deposit placement arrangement with one bank, their parent bank.

In response to comments regarding the status of ''dual-hatted'' or ''dual'' employees under the final rule, the FDIC notes that the statutory ''employee'' exception applies solely to an ''employee'' who satisfies the definition of an employee provided by the statute. The statute defines an ''employee'' as any employee: ''(i) who is employed exclusively by the insured depository institution; (ii) whose compensation is primarily in the form of a salary; (iii) who does not share such employee's compensation with a deposit broker; and (iv) whose office space or place of business is used exclusively for the benefit of the insured depository institution, which employs such individual.'' [28] This exception does not apply to a contractor or dual employee because they are not employed exclusively by insured depository institutions. The exception would, however, apply to ''dual-hatted'' employees that are employed exclusively by the bank so long as the employees meet each of the other statutory elements of the ''employee'' definition.

b. Primary Purpose Exception

i. Overview of Proposal and Comments

Section 29 provides that the primary purpose exception applies to ''an agent or nominee whose primary purpose is not the placement of funds with depository institutions.'' In the Brokered Deposits NPR, the FDIC proposed a new interpretation for the primary purpose exception based on the relationship between the agent or nominee and its customers. Specifically, the primary purpose exception would apply when the primary purpose of the agent's or nominee's business relationship with its customers is not the placement of funds with depository institutions.

Along with the new interpretation, the FDIC proposed a new framework for evaluating business relationships that may meet the primary purpose exception and identified two types of relationships that would be deemed to qualify for the exception. Under the proposal, the FDIC would evaluate whether a particular business relationship meets the primary purpose exception through an application process, available to both IDIs and third parties. The proposed application process was intended to allow the FDIC to ensure that the applicant met the relevant criteria for the exception and to promote transparency and consistency for applicants. The proposal also established an ongoing reporting process for approved applicants.

General Comments. In response to the proposed framework, many commenters suggested that the FDIC (1) establish more bright-line tests, or business arrangements, that qualify for the primary purpose exception, and (2) eliminate the application process, or revise it to create a more streamlined process. Commenters generally argued that if the FDIC identified more bright-line tests, or business relationships, with respect to the primary purpose exception then there would be little, if any, need for an application process. Two commenters were critical of the proposed changes to the definition of the primary purpose exception. In particular, one commenter stated the proposed changes would invite evasion and create opportunities for nonbanks instead of protecting the DIF. The commenter believed that the primary purpose exception should be based on the primary purpose of deposits, not the purpose of the agent and its customer. Another commenter stated that the proposal reflected rulemaking centered on non-bank third parties, whereas the FDIC's mandate and responsibilities direct the agency to focus on IDIs that it insures and supervises.

One commenter representing large financial institutions suggested that bright-line criteria will be more efficient because banks can evaluate their individual circumstances for a primary purpose exception and not have to wait for the FDIC's approval. The commenter stated that the banks would make good faith determinations that would be subject to review in the examination process. The commenter, and several others, raised concerns that, unless the FDIC eliminates or revises the proposed application process, the FDIC would be inundated with applications from banks and third parties seeking the primary purpose exception.

Primary purpose exception based on 25 percent test. In addition to the general comments about the overall framework for evaluating primary purpose exceptions, the FDIC also received numerous comments on the proposed primary purpose exception for entities placing less than 25 percent of customer assets under management with insured depository institutions (the ''25 percent'' test or business relationship). Most of those comments sought additional clarity as to the definitions of ''business line'' and ''customer assets under management.'' One commenter noted that the phrase ''customer assets under management'' is a term of art in securities law and limited in use for broker dealers or investment advisors, which the commenter suggested could lead to confusion and limit the scope of the exception. At least one commenter suggested that the threshold be raised to 50 percent, while another suggested that the 25 percent threshold was too high and would allow significant amounts of deposits to flow to IDIs without restricting business models that create risk.

Primary purpose exception based on enabling transactions. In the Brokered Deposits NPR, the FDIC proposed a second business relationship that would meet the proposed primary purpose exception for parties that place funds at depository institutions for the purpose of enabling transactions (the ''the enabling transactions'' test or business relationship). The FDIC received comments suggesting that the FDIC provide clarity regarding the terms ''enabling transactions'' and ''transaction account'' to further clarify the types of deposit arrangements that would meet the exception. Other commenters indicated that the existence of some fees, remuneration, or interest paid, should not prevent an entity from being eligible for the primary purpose exception. One commenter noted that receiving a fee for wire transfer processing or other related transaction services does not necessarily transform a third party's primary intent from processing ordinary business transactions into deposit placement activity.[29]

Application process. For both the 25 percent and the enabling transactions business relationships, the FDIC proposed an application process through which applicants would demonstrate that they meet the criteria for the particular exception and the FDIC, on an expedited basis, would review and approve the application. Commenters who addressed this process were critical, suggesting that, at least for the two business relationships that meet the criteria set forth in the proposal, at most a notice requirement should exist. Commenters raised concerns about FDIC's ability to evaluate so many applications in a timely manner and suggested that the FDIC could evaluate the business relationships as part of an examination rather than requiring approval in advance.

Other business relationships. As noted above, the FDIC also proposed

[28] 12 U.S.C. 1831(g)(4).

[29] Under the proposal, the FDIC only would have considered fees, interest, or other remuneration paid to the underlying *depositor.*

that parties that did not qualify under either the ''25 percent'' business relationship or the ''enabling transactions'' business relationship could apply for a primary purpose exception. A number of commenters raised concerns about the application process, in some cases arguing it should be eliminated and in most cases stating that it would be too cumbersome and time consuming both for the applicants and for the FDIC to evaluate the applications in a timely manner. Commenters suggested that the FDIC instead should establish additional ''bright-line'' categories of business arrangements that are eligible for the primary purpose exception, which would largely obviate the need for an application process aside from entities that did not fit within one of the predetermined business relationships. Specifically, commenters noted that some business arrangements have been provided the primary purpose exception in the past via staff advisory opinions, and that such arrangements should also be included in the list of arrangements that are deemed to meet the primary purpose exception.

ii. Primary Purpose Exception in the Final Rule

As described below, and in response to the comments, the final rule retains the proposal's interpretation of the primary purpose exception and revises the proposed framework for the primary purpose exception in several ways. Like in the proposal, the primary purpose exception, in the final rule, will apply when, with respect to a particular business line, the primary purpose of the agent's or nominee's business relationship with its customers is not the placement of funds with depository institutions. Whether an agent or nominee qualifies for the primary purpose exception will be based on an analysis of the agent's or nominee's relationship with those customers. However, the FDIC agrees with commenters that the proposed application process for business relationships that the FDIC designates as meeting the primary purpose exception is not necessary.

In the final rule, the FDIC (1) identifies several, specific business relationships as meeting the primary purpose exception, described as ''designated exceptions,'' and (2) allows agents or nominees that do not meet one of these designated exceptions to apply for a primary purpose exception. Business relationships that qualify for a designated exception will not be required to go through the application process. For two of the designated exceptions, the FDIC will require a notice, while for the other designated exceptions, no notice, application, or reporting will be required. Under the final rule, entities that do not meet one of the designated exception may apply for a primary purpose exception. The final rule will also authorize the FDIC to identify additional relationships as designated exceptions to the primary purpose exception (and therefore will not require an application).

The FDIC also notes that certain agents or nominees may only place deposits at one IDI, in which case the agent or nominee would not be a deposit broker, regardless of whether the agent or nominee satisfies the primary purpose exception. However, the FDIC notes that if an agent or nominee places deposits at one IDI as part of one business line,[30] such as part of a sweep program, and places deposits at one or more other IDIs as part of one or more other business lines, such as issuing brokered CDs, that agent or nominee would still qualify as a deposit broker unless it satisfied the primary purpose exception, with respect to a particular business line, or one of the other nine exceptions to the definition of ''deposit broker.''

A. Designated Exceptions

In the final rule, the FDIC recognizes a number of business relationships, known as ''designated exceptions,'' described below, as meeting the primary purpose exception. Two of these relationships are the relationships described in the proposal as business relationships deemed to meet the primary purpose exception—the ''25 percent'' business relationship and the ''enabling transactions'' business relationship. Unlike in the proposal, these two relationships will not be required to go through the application process, and instead will only require a notice. The final rule also adds a number of designated exceptions that will neither require a notice nor an application. The additional designated exceptions include business relationships that have previously been viewed by staff at the FDIC as meeting the primary purpose exception, and were evaluated as part of this rulemaking process to meet the primary purpose exception under the interpretation of the exception adopted in this final rule, as well as certain business arrangements identified by commenters as meeting the primary purpose exception. The following business relationships are identified as designated exceptions under the final rule: Business relationships in which, with respect to a particular business line: [31]

(1) Less than 25 percent of the total assets that the agent or nominee has under administration for its customers is placed at depository institutions;

(2) 100 percent of depositors' funds that the agent or nominee places, or assists in placing, at depository institutions are placed into transactional accounts that do not pay any fees, interest, or other remuneration to the depositor;

(3) a property management firm places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing property management services;

(4) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing cross-border clearing services to its customers;

(5) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing mortgage servicing;

(6) a title company places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating real estate transactions;

(7) a qualified intermediary places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating exchanges of properties under section 1031 of the Internal Revenue Code;

(8) a broker dealer or futures commission merchant places, or assists in placing, customer funds into deposit accounts in compliance with 17 CFR 240.15c3–3(e) or 17 CFR 1.20(a);

(9) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of posting collateral for customers to secure credit-card loans;

(10) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of paying for or reimbursing qualified medical expenses under section 223 of the Internal Revenue Code;

(11) the agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary

[30] Additional discussion regarding the concept of a ''business line'' is provided in section I(C)(2)(b)(ii)(E).

[31] The FDIC recognizes that some of these arrangements may be between an agent or nominee and one insured depository institution. Under this final rule, if the agent or nominee has an exclusive deposit placement arrangement with one IDI, and does not place or facilitate the placement of deposits at any other IDI, then it will not meet the ''deposit broker'' definition.

purpose of investing in qualified tuition programs under section 529 of the Internal Revenue Code;

(12) the agent or nominee places, or assists in placing, customer funds into deposit accounts to enable participation in the following tax-advantaged programs: Individual retirement accounts under section 408(a) of the Internal Revenue Code, Simple individual retirement accounts under section 408(p) of the Internal Revenue Code, and Roth individual retirement accounts under section 408A of the Internal Revenue Code;

(13) a Federal, State, or local agency places, or assists in placing, customer funds into deposit accounts to deliver funds to the beneficiaries of government programs; and

(14) the agent or nominee places, or assists in placing, customer funds into deposit accounts pursuant to such other relationships as the FDIC specifically identifies as a designated business relationship that meets the primary purpose exception.

1. Deposit Placements of Less Than 25 Percent of Customer Assets Under Management by the Third Party

Under the proposal, the FDIC provided that the primary purpose of an agent's or nominee's business relationship with its customers will not be considered to be the placement of funds at a depository institution, subject to an application process, if less than 25 percent of the total assets that the agent or nominee has under management for its customers, in a particular business line, is placed at depository institutions.

The FDIC is finalizing the proposed ''25 percent'' test generally as proposed but, in response to comments, is revising the phrase ''assets under management'' to ''assets under administration.'' The FDIC is also providing additional clarity regarding the concept of a ''business line'' in section I(C)(2)(b)(ii)(E).

The FDIC is also reiterating for clarification that if more than 25 percent of the total customer assets that an agent or nominee has under administration is placed at depository institutions, the agent or nominee may still apply for a primary purpose exception through the application process described in section I(C)(3)(c).

Customer assets under management. In response to comments indicating that the phrase ''customer assets under management'' is generally limited to certain broker dealer and investment advisor business, the FDIC is revising the term to ''customer assets under administration.'' The revised phrase more accurately reflects the FDIC's intention that this test cover both customer assets managed by the agent or nominee and those customer assets for which the agent or nominee provides certain other services but may not exercise deposit placement or investment discretion.

As part of the final rule, in determining the amount of customer assets under administration by an agent or nominee, for a particular business line, the agent or nominee must measure the total market value of all the financial assets (including cash balances) that the agent or nominee administers on behalf of its customers that participate in a particular business line.

As a result, under the final rule, an agent or nominee will meet the designated exception if less than 25 percent of the total assets that the agent or nominee has under administration for its customers, in a particular business line, is placed at depository institutions.

2. Enabling Transactions

Proposal. As part of the Brokered Deposits NPR, the FDIC also proposed that the primary purpose of an agent's or nominee's business relationship with its customers would not be considered to be the placement of funds if the agent or nominee places depositors' funds into transactional accounts for the purpose of enabling transactions.

Under the proposed rule, if 100 percent of an agent's or nominee's customer funds that are placed at depository institutions are placed into transaction accounts, and no fees, interest, or other remuneration is provided to the depositor, then the agent or nominee would meet the primary purpose exception of enabling transactions.

However, the FDIC also proposed that if the agent or nominee, or the depository institution, pays any sort of interest, fee, or provides any remuneration (*e.g.,* nominal interest paid to the deposit account), the agent or nominee would still be eligible for the primary purpose exception, but the FDIC would more closely scrutinize the agent's or nominee's business to determine whether the primary purpose is truly to enable payments. The FDIC identified factors to be considered in evaluating such a scenario, including the number of transactions in customer accounts, and the interest, fees, or other remuneration provided, in determining the applicability of the primary purpose exception.

Under the final rule, if an agent or nominee places 100 percent of its customer funds that have been placed at depository institutions, with respect to a particular business line, into transaction accounts, and no fees, interest, or other remuneration is provided to the depositor, the agent or nominee will meet the designated exception of enabling transactions. Entities that wish to avail themselves of the designated exception for ''enabling transactions'' would not be subject to the application process, as under the proposal, and would instead be required to file a notice, as detailed in section I(C)(3).

Under the final rule, agents or nominees that place customer deposits at depository institutions in transactional accounts in which the customer earns some amount of interest, fees, or other remuneration, will continue to be subject to an application process. However, in response to comments that asked for more clarity on how these arrangements can meet the primary purpose exception, the following criteria will be considered as part of the application process:

- The amount of interest, fees, or other remuneration;
- The amount of transactions that customers make, on average, on a month-to-month basis;
- The marketing materials provided by the agent or nominee indicate that funds placed into insured depository institutions are to enable transactions for depositors; and
- If any customer funds are placed in deposit accounts that are not transaction accounts, the percentage of customer funds placed in deposit accounts that are not transaction accounts.

To the extent an agent or nominee that places all customer deposits at depository institutions in transactional accounts can establish via the application process that it markets and offers its deposit placement service for the primary purpose of enabling transactions and that its customers (1) earn a nominal amount of interest, fees, or other remuneration on its deposits, based on the interest rate environment at the time, or (2) on average, make more than six transactions a month, then the FDIC will determine that the agent or nominee meets the primary purpose exception. The FDIC is providing this guidance in the preamble to provide clarity to potential applicants and to streamline the approval of applications from agents or nominees with a primary purpose of enabling transactions. The FDIC is not establishing a designated exception for such arrangements due to the lack of bright line standards for evaluating marketing materials and for defining ''nominal'' interest, fees, or other remuneration in different interest

rate environments.[32] The FDIC is less likely to approve an application in which customers receive more than a nominal amount of interest, fees, or other remuneration on their deposits and, on average, make fewer than six transactions per month.

If an agent or nominee that applies for a primary purpose exception places a small percentage of deposits in accounts that are not transaction accounts, the FDIC may still consider approving the application, depending on the facts and circumstances, including an analysis of the criteria discussed above, but will more closely scrutinize whether the primary purpose is enabling transactions.

As noted in the Brokered Deposits NPR, and in response to commenters asking the FDIC to expand the proposed exception, the proposed exception was not intended to apply to all third parties that place deposits into accounts that have transactional features and is not intended to create an incentive for deposit brokers to move customers from time deposits to transaction accounts in order to evade brokered deposits restrictions. Rather, the proposed exception was intended to and will, as part of this final rule, apply only to third parties whose business purpose is to place funds at depository institutions to enable transactions or make payments.

B. Additional Designated Exceptions

As provided in the proposal, the FDIC indicated that it would review existing advisory opinions to determine those that should be codified in the final rule and those that were outdated and should be rescinded.[33] A number of the staff advisory opinions related to the primary purpose exception, and some of these opinions interpreted the primary purpose exception as applying to certain third parties engaged in certain business arrangements. While these opinions were based upon an interpretation of the primary purpose exception that is different than the interpretation provided in this final rule, the outcome of whether the arrangements meet the primary purpose exception under the final rule interpretation would not necessarily change if evaluated under the revised interpretation. In an effort to streamline the process for determining whether an agent or nominee meets the primary purpose exception, the FDIC agrees with commenters that it is more efficient to include some of these arrangements as part of the bright-line test for the exception. In this way, entities that have relied upon previous staff opinions for the primary purpose exception will be able to continue to rely upon the exception.

Moreover, and in response to comments, the FDIC is also identifying other business relationships that the FDIC believes meet the primary purpose exception as designated exceptions. Agents or nominees that qualify for a designated exception listed below do not have to file an application or notice.

Property Management Services

Certain property management firms assist clients, such as homeowner's associations (''HOAs''), in managing their properties. These property management firms might place deposits at insured depository institutions because they need to deposit rent checks or security deposits on behalf of their client and may use some of those funds to pay for maintenance or repairs needed on the client's property. Under the final rule, a property management firm that places deposits at insured depository institutions to provide property management services will be deemed to meet the primary purpose and qualify for a designated exception. The primary purpose of the relationship between a property management service and its customer is to manage a property, rather than to place funds in deposits accounts at IDIs.[34]

The FDIC also notes that companies that assist property management firms or their clients in placing funds at insured depository institutions to maximize yield or deposit insurance may still qualify as deposit brokers. These companies that either place or assist in placing funds would not be eligible for the primary purpose exception under this particular business relationship because the primary purpose of their deposit placement activity, on behalf of their client (the property management firm), is not to provide property management functions.

Cross-Border Clearing Services

Certain insured depository institutions provide cross-border clearing services for customers to facilitate fund or payment transfers where the payee and the transaction recipient are located in separate countries. Specifically, in these arrangements, a nonbank entity or a bank that does not have cross-border clearing capabilities places, or assists in placing, its customer funds into bank accounts at an IDI (the ''clearing IDI'') that acts as an intermediary to clear and settle the transfer of the customer's funds into the transaction recipient's bank account. In providing cross-border clearing functions, the customer's funds are placed in deposit accounts at the clearing IDI for a very limited period of time and are typically disbursed to the recipient immediately (or almost immediately).

Under these circumstances, the third party's primary purpose in placing, or facilitating the placement of, deposits at the clearing IDI is to facilitate the clearing of payments and will be deemed to meet the primary purpose exception and qualify for a designated exception. This outcome is consistent with previous staff advisory opinions related to clearing services provided by insured depository institutions.[35]

The FDIC recognizes that IDIs provide a variety of clearing services that may be outside of the scope of the specific cross-border clearing services designated exception described above. At this point, the FDIC will evaluate whether these other clearing services provided to customers will meet the primary purpose exception as part of the application process. As described in section I(C)(3)(h), if the FDIC determines that other clearing services meet the primary purpose exception, then it will also consider whether additional particular clearing services should be identified as designated exceptions.

Real Estate Related Transactions

Mortgage servicing. Mortgage servicing rights are often sold to mortgage servicers that are responsible for the day-to-day management of a loan account, including collecting a borrower's monthly payments of principal and interest and disbursing these funds to stakeholders pursuant to the terms of servicing agreements. Mortgage service providers also collect from borrower's prepayments of each borrower's respective property tax and property insurance premiums and hold such funds in escrow accounts until such payments are due, at which time they use the escrowed funds to make payments. As part of managing these services, mortgage servicers place funds into omnibus deposit accounts at insured depository institutions. The primary purpose of the mortgage servicer's relationship with its customers is providing the services listed above related to the loan account,

[32] Under the final rule, the FDIC retains authority to determine whether a rate of interest paid is nominal.

[33] A full discussion of that review, and the comments received on previous advisory opinions, is provided below in section I(C)(5).

[34] FDIC Staff Advisory Opinion 17–02 (June 19, 2017).

[35] *See* FDIC Staff Advisory Opinion 16–01 (May 19, 2016).

and not the placement of deposits at IDIs. Accordingly, under this final rule, mortgage servicers that place deposits at insured depository institutions to fulfill their obligations under servicing agreements meet the primary purpose exception and qualify for a designated exception. This outcome is consistent with previous staff advisory opinions related to mortgage servicers.[36]

Residential/Commercial Escrow Services. Prior to closing a real estate transaction, the parties involved (*e.g.,* the seller and buyer) often times have the funds necessary to complete the pending real estate transaction held by a title insurance company in a deposit account at an insured depository institution. The purpose of having a third party title company hold funds in an escrow account is to protect the interests of all parties involved by ensuring that no funds or property will be transferred until every escrow term and condition has been met. The primary purpose of the third party title company's relationship with its customers in such an arrangement is typically providing title services or facilitating the closure of the real estate transaction, and in any case not the placement of deposits at IDIs. Accordingly, under the final rule, title companies that place deposits at insured depository institutions to facilitate a real estate transaction are deemed to meet the primary purpose exception and qualify for a designated exception. This outcome is consistent with previous staff advisory opinions related to title companies.[37]

1031 Like-Kind Exchanges. Some deposits are placed at banks by financial intermediaries known as ''qualified intermediaries'' or ''QIs.'' Under section 1031 of the Internal Revenue Code (26 U.S.C. 1031), the role of a QI is to facilitate the exchange of ''like kind'' properties on behalf of clients known as ''exchangers.'' Pursuant to a written agreement, the QI acquires property from the exchanger and then arranges for its resale. With the proceeds, the QI acquires another property and then transfers it to the exchanger. If the transaction is handled properly, the exchanger receives favorable tax treatment.

Before the QI uses the proceeds of the first property to purchase the second property, the funds are held by the QI in a deposit account at a bank. In this case, the primary purpose of the QI's relationship with its clients is to facilitate the exchange of property, not to place deposits at IDIs. Accordingly, under the final rule, QIs that place deposits into depository institutions to facilitate the exchange of two properties under section 1031 of the Internal Revenue Code are deemed to meet the primary purpose exception and qualify for a designated exception. This outcome is consistent with previous staff advisory opinions related to certain QIs.[38]

Deposits Related to Satisfaction of Certain Regulations

Broker Dealer Funds in a Special Reserve Account for the Benefit of Customers. A broker dealer registered with the United States Securities and Exchange Commission (SEC) is required to establish an account at a bank titled ''Special Reserve Account for the Benefit of Customers'' and to keep in the account cash or qualified securities (Special Reserve Account).[39]

The Special Reserve Account protects a broker dealer's customers in the event the broker dealer is liquidated, in which case the funds and qualified securities in the Special Reserve Account, in addition to funds collected by the liquidating agent from customers of the firm that have debits, are used to satisfy customer claims on a pro rata basis before being available for the firm's general creditors. While the broker dealer is operating as a going concern, it is prohibited from using the funds or qualified securities in the Special Reserve Account as security for a loan to the broker dealer by the bank.[40]

The primary purpose of the broker dealer's business relationship with its customers is to facilitate the buying and selling of securities on behalf of customers. As part of that relationship a broker dealer is required to establish a Special Reserve Account is to provide customer protection in the event of a broker dealer liquidation. Thus, to the extent that the balance in a Special Reserve Account is owned by customers at the time funds are deposited into it, such arrangement meets the primary purpose exception and qualifies for a designated exception.[41]

Futures Commission Merchant's Funds in a Segregated Customer Account. Regulations of the Commodity Futures Trading Commission (CFTC) provide protections for futures customer funds under a regulatory system similar to the SEC's requirements related to the Special Reserve Account. Under the CFTC's regulations, a futures commission merchant must maintain in a separate account at a bank or trust company money or permitted investments in an amount at least sufficient in the aggregate to cover its total obligations to all futures customers as computed under a formula established by the CFTC (Segregated Customer Account).[42]

The Segregated Customer Account protects a futures commission merchant's customers in the event the futures commission merchant is liquidated, in which case the Account balance and permitted investments in the Segregated Customer Account, in addition to funds collected by the liquidating agent from customers of the firm that have debits, are used to satisfy customer claims on a pro rata basis before being available for the firm's general creditors.

The primary purpose of a futures commission merchant's business relationship with its customers is to facilitate the buying and selling of futures and other investment products on behalf of customers. As part of that relationship, the futures commission

[36] *See generally,* FDIC Staff Advisory Opinion 92–78 (Nov. 10, 1992); *see also* FDIC Staff Advisory Opinion 17–02 (June 19, 2017).

[37] *See* FDIC Staff Advisory Opinion 17–02 (June 19, 2017).

[38] *See id.*

[39] 17 CFR 240.15c3–3(e), 240.15c3–3a. The amount required to be held in the Special Reserve Account is determined pursuant to an SEC formula where, for each customer, the broker dealer adds up free credit balances and other credits in the account, and then reduces that number by certain debits. The broker dealer then aggregates the calculation for all customers and this aggregate represents the amount that a broker dealer must keep, in cash or qualified securities, in the Special Reserve Account at a bank. *Id.*

''Free credit balances'' are defined as liabilities of a broker or dealer to customers which are subject to immediate cash payment to customers on demand, whether resulting from sales of securities, dividends, interest, deposits or otherwise, and can include funds carried in a certain securities account, including variation margin or initial margin, marks to market, and proceeds resulting from margin paid or released in connection with closing out, settling or exercising futures contracts and options thereon. 17 CFR 240.15c3–3(a)(8).

[40] 17 CFR 240.15c3–3(e).

[41] *See,* FDIC Staff Advisory Opinion 94–39 (Aug. 17, 1994). To the extent that the balance of a Special Reserve Account is owned by the broker dealer and only becomes owned by its customers when a liquidating agent of a failed broker dealer is appointed and distributes the funds to all customers on a pro rata basis, then the broker dealer would not be a third party placing or facilitating the placement of funds of others, and would be outside the scope of the deposit broker definition. The FDIC is not addressing the ownership of Special Reserve Accounts in this final rule.

[42] 17 CFR 1.20(a). The formula set in CFTC regulations calls for the amount to be maintained in the segregated customer account the market value of futures customer funds subject to certain adjustments. 17 CFR 1.20(i). ''Futures customer funds'' include all money, securities, and property received by a futures commission merchant from, for, or on behalf of, futures customers to margin, guarantee, or secure contracts for future delivery on or subject to the rules of a contract market or derivatives clearing organization, as the case may be, and all money accruing to such futures customers as the result of such contracts.'' 17 CFR 1.3.

merchant is required to establish a Segregated Customer Account to provide customer protection in the event of a futures commission merchant's liquidation. Thus, to the extent that the balance of a Segregated Customer Account is owned by the firm's customers at the time funds are deposited into it, such arrangement meets the primary purpose exception and qualify for a designated exception.[43]

The FDIC is aware of other deposit arrangements in which entities place deposits as required under federal or state law. While the FDIC does not have sufficient knowledge of such arrangements to grant designated exceptions for such arrangements in this final rule, the FDIC expects it would approve an application for a primary purpose exception under such circumstances when the primary purpose is not the placement of deposits. The FDIC will consider identifying specific such arrangements as designated exceptions in the future if warranted.

Deposits Placed as Required Collateral for Credit-Card Loans

Some deposits are placed at insured depository institutions by third parties that offer secured credit-card loans to their customers. The loans are secured by deposits belonging to the customers and held at insured depository institutions as required collateral that is typically capped to the amount of the credit line granted to the customer by the third party. Under this final rule, the primary purpose of the third party's relationship with its customers is to provide consumers access to credit card loans and not to place deposits with IDIs. Accordingly, under this final rule, third parties that place customer funds into depository institutions as collateral for their customers to secure credit card loans will meet the primary purpose exception and qualify for a designated exception. This outcome is consistent with previous staff advisory opinions.[44]

Deposits Placed To Pay for or To Reimburse Qualified Medical Expenses Under Section 223 of the Internal Revenue Code

Some deposits are placed with IDIs on behalf of customers participating in health savings accounts (HSAs). Individuals that participate in an HSA can use those funds to pay for or reimburse qualified medical expenses with certain tax benefits.[45] Individuals may place funds directly with IDIs into HSAs, or, their funds may be placed into HSAs through employers that utilize third party administrators that manage HSA programs. As part of those management services, the third party administrator places, or facilitates the placement of, deposits at IDIs directly from employer payroll accounts. Funds in a designated HSA are intended to be used by the depositor for payment of qualified medical expenses. The primary purpose of the third party administrator's relationship with its customers is to assist in placing customer funds into HSAs to facilitate the payment for or reimbursement of qualified medical expenses. Accordingly, under this final rule, entities that place, or facilitate the placement of, customer funds into HSAs pursuant to section 223 of the Internal Revenue code meet the primary purpose exception and qualify for a designated exception.

The FDIC is aware that not all individuals with funds in an HSA use those funds only for qualified medical expenses. Nonetheless, the FDIC is persuaded that the primary purpose of HSA fund administrators is to enable the payment of qualified medical expenses. However, the FDIC will continue to monitor the evolution and use of HSA accounts over time. If at some point in the future, the primary purpose of HSA administrators has evolved to something other than enabling transactions related to qualified medical expenses, the FDIC may reevaluate whether this designated exception is still warranted. Any changes would be made through notice and comment rulemaking.

Deposits Placed for Qualified Tuition Programs Under Section 529 of the Internal Revenue Code

Some deposits are placed at IDIs by states, state agencies, or educational institutions as part of qualified tuition plans (or ''529 plans''). A 529 plan is a tax-advantaged savings plan designed to encourage saving for future education costs.[46] The individual contributions for a 529 plan may be invested in a variety of financial products, including deposit products. The primary purpose of the state, state agency, or educational institution's relationship with its investors is to provide a tax-advantaged savings plan designed to encourage saving for future education costs and not the placement of deposits. Accordingly, under this final rule, states, state agencies, or educational institutions that place investor funds into depository institutions pursuant to section 529 of the Internal Revenue Code will meet the primary purpose exception and qualify for a designated exception.

Deposits Placed in a Retirement Account Not Part of an Employee Benefit Plan

Section 29 contains an express exception from the deposit broker definition for trustees of a pension plan or other employee benefits plan and for plan administrators and investment advisors of such plans.[47] Section 29 also provides an express exception for a trustee or custodian of a pension or profitsharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code.[48] A commenter requested that the primary purpose exception apply with respect to individual retirement accounts.

Congress has provided similar tax incentivized treatment for other retirement account arrangements that do not meet the definition of Employee Benefit Plan or the pension and profitsharing plans referenced in section 29. Such arrangements include a traditional IRA, Simple IRA, and Roth IRAs. The primary purpose of an entity who places deposits in association with such plans is to enable participation in the retirement program and not place deposits at IDIs. Accordingly, the FDIC is establishing a designated exception for such plans.[49]

Deposits Placed by Agencies To Disburse Government Benefits

Federal, state or local agencies (''Agencies'') sometimes use debit or prepaid cards to deliver funds to the beneficiaries of government programs. In some cases, such programs are structured so that each beneficiary will own a separate deposit account at particular insured depository

[43] *See* FDIC Staff Advisory Opinion 17–02 (June 19, 2017).

[44] *See* FDIC Staff Advisory Opinion 94–13 (Mar. 11, 1994).

[45] 26 U.S.C. 223.

[46] 26 U.S.C. 529.

[47] 12 U.S.C. 1831f(g)(2)(D) and (E). Because the exceptions for trustees, plan administrators, and investment advisers for pension plans and other employee benefit plans are provided in separate statutory exception and are not related to the primary placement exception, no notice or application requirement would apply.

[48] 12 U.S.C. 1831f(g)(2)(H).

[49] This treatment for IRAs and other retirement plans that are not part of an employee benefit plan is consistent with how the FDIC viewed such accounts in a 1984 final rule, along with the Federal Home Loan Bank Board, when it adopted the definition of ''deposit broker'' upon which the current statutory definition is based.

The insurance coverage currently available to deposits held in connection with pension funds and other employee benefit plans will not be affected by the rule unless such deposits are placed by or through a deposit broker. *In addition, trustees and custodians of IRA and Keogh accounts will not be deemed to be deposit brokers.* 49 FR 13003, 13009 (Apr. 4, 1984). (emphasis added)

institutions (with the account being accessible by the beneficiary through the use of a debit card). Other programs may be structured so that multiple beneficiaries will own a commingled deposit account with ''per beneficiary'' or ''pass-through'' deposit insurance coverage. In these scenarios, the Agency is involved in choosing IDIs or opening deposit accounts to assist in the disbursement of funds to beneficiaries, as mandated by law. These accounts are also limited to the placement of funds for a designated government benefit program and may not be commingled with the beneficiary's other funds outside of the government benefit program. The primary purpose of the Agency's relationship with beneficiaries is to discharge its legal obligation by disbursing funds as part of a government program. Accordingly, under this final rule, Agencies that place funds for beneficiaries of government programs will meet the primary purpose exception and qualify for a designated exception.

C. Other Business Relationships

Under the final rule, agents or nominees that meet the ''deposit broker'' definition, but do not qualify for a designated exception, may submit an application to the FDIC. The FDIC will review whether the applicant sufficiently demonstrates that the primary purpose of the agent or nominee is something other than the placement, or facilitating the placement, of funds at insured depository institutions. As noted above, in conducting this review, the FDIC will specifically look at the primary purpose of the business relationship between the agent or nominee and its customers, with respect to a particular business line. For example, offering loans or a range of lending products, could be described in the application as the primary purpose of a business relationship, if lending is a more significant portion of a particular business line than placing, or facilitating the placement of, deposits is. As part of its review, the FDIC will, as proposed, consider the following factors: (1) The revenue structure for the agent or nominee; (2) whether the agent's or nominee's marketing activities to prospective depositors is aimed at opening a deposit account or to provide some other service, and if there is some other service, whether the opening of the deposit account is incidental to that other service; and (3) the fees, and type of fees, received by an agent or nominee for any deposit placement service it offers. A detailed discussion of the specific content requirements and timing for the application process is provided in section I(C)(3)(d) of this notice.

The FDIC expects to make publicly available on the FDIC's website (1) redacted summaries of certain approved applications, as soon as practicable, and (2) a list of additional designated exceptions, to the extent applicable, that will describe additional business arrangements not described in this rulemaking that the FDIC in the future determines meet the primary purpose exception without requiring an application. Redacted summaries available on the FDIC's website will typically describe business relationships not discussed in this final rule that the FDIC has determined to meet the primary purpose exception and may be cited as support in applications for the primary purpose exception in certain circumstances. Designated exceptions identified following this rulemaking may be relied upon, without an application, by any agent or nominee that meets the published criteria. The FDIC would also note on the website whether a notice and/or any ongoing reporting will be required with respect to a new designated exception.

The FDIC intends for the application process to promote transparency and consistency for entities seeking to use the primary purpose exception for business relationships that do not qualify for a designated exception. In addition to transparency and consistency for the public, the application process is intended to enhance FDIC's ability to protect the DIF and promote safety and soundness, particularly with respect to new or novel business arrangements.

D. Business Relationships Ineligible for the Primary Purpose Exception

1. Deposit Placements of Brokered CDs

In the Brokered Deposits NPR, the FDIC stated that it would continue to consider a person's placement of brokered CDs (as described in the third prong to the deposit broker definition and as discussed above) as deposit brokering. Under the proposal, for purposes of establishing the person's primary purpose, the person's placement of brokered CDs would be considered a discrete and independent business line from other deposit placement businesses. Thus, the primary purpose for that particular business line would always be the placement of deposits at depository institutions, even if the person may not be considered a deposit broker for other deposits that it places (or for which it facilitates the placement), which would be evaluated as a separate business line.

The FDIC is finalizing this aspect of the proposed rule as proposed. Accordingly, consistent with the intent of Section 29 (and part 337 of the FDIC's regulations), brokered CDs, as has been the case since 1989, will be considered brokered. Deposits related to brokered CDs will not be included for purposes of determining whether a person's other business lines meet the primary purpose exception.

2. Deposit Placements for Purposes of Encouraging Savings

In the Brokered Deposits NPR, the FDIC proposed that the FDIC would not grant a primary purpose exception if the third party's primary purpose for its business relationship with its customers is to place (or assist in the placement of) funds into deposit accounts to ''encourage savings,'' ''maximize yield,'' ''provide deposit insurance,'' or any similar purpose. The FDIC expressed concern that these types of services could evade the purposes of section 29.

The FDIC is finalizing this aspect of the proposed rule as proposed. It is the FDIC's view that there is no meaningful distinction between a primary purpose of ''encouraging savings,'' ''maximizing yield,'' ''providing deposit insurance,'' or any similar purpose and a primary purpose of placing funds into a deposit account. Furthermore, granting a primary purpose exception based on such rationales could result in *all* deposit arrangements satisfying the primary purpose exception, which would not be consistent with section 29. As such, third parties that either place or assist in the placement of deposits to provide these core deposit-placement services for its customers will not qualify for the primary purpose exception.

The FDIC notes that one of the designated exceptions is for 529 plans in which the primary purpose is to encourage savings for future education costs as part of a tax-advantaged savings plan. While a primary purpose of encouraging or enabling savings does not generally qualify for the primary purpose exception for the reasons described above, encouraging savings as part of a specific tax-incentivized government program, similar to 529 plans, may qualify.

E. Evaluation of Business Lines

As noted in the Brokered Deposits NPR, the analysis and assessment of discrete business lines is an important aspect of whether certain agents or nominees meet the primary purpose exception. In evaluating whether an

applicant meets the requirements of the primary purpose exception, the FDIC would analyze specific business lines in which the applicant has a specific type of relationship with its customers. This was intended to prevent an agent or nominee engaged in the brokering of deposits from evading the statutory restrictions by adding or combining its brokering business with another business such that the deposit broker business is no longer its primary purpose. Under the proposed rule, the term business line would refer to the business relationships an agent or nominee has with a group of customers for whom the business places, or facilitates the placement of, deposits.

Commenters who addressed the proposed definition of ''business line'' raised concerns that the proposed definition does not reflect how businesses view their business lines. Specifically, commenters suggested that the FDIC permit the third party to identify one or more business lines for purposes of the application process, so that the business line would reflect risk management and reporting policies and procedures utilized by the third party. These commenters expressed the view that the third party, rather than the FDIC, should have discretion to determine specific business lines, as business lines will vary significantly across different entities. One commenter noted that business line information is generally proprietary and confidential and thus third parties may not be willing to provide such information.

The FDIC expects that entities that submit a notice or application for the primary purpose exception should, in good faith, determine their appropriate, specific business lines. The FDIC, in reviewing a particular business arrangement for the primary purpose exception, will generally defer to the descriptions of business lines provided by the applicant or notice-filer. Nonetheless, the determination of what constitutes a business line will depend on the facts and circumstances of a particular deposit placement arrangement, and the FDIC ultimately retains discretion to determine the appropriate business line to which the primary purpose exception would apply. The FDIC is more likely to scrutinize the identification of a business line if the business relationships to which it refers are materially broader than the business relationships with the specific group of customers for whom the business places, or facilitates the placement of, deposits.

The FDIC expects that in many cases, particularly in the case of agents or nominees who are nonfinancial companies, the identification of a business line will be simple and straightforward, and in some cases may encompass an entire business.

F. Involvement of Other Third Party Intermediaries

If an agent or nominee qualifies for a statutory exception from the deposit broker definition, it is possible that one or more additional third parties that are engaged in the business of placing, or facilitating the placement of, customer deposits may qualify as a deposit broker. The FDIC understands that, in certain deposit placement arrangements, agents or nominees may use third party intermediaries (and in some cases a number of them) to provide administrative functions. To the extent that these third party intermediaries do not meet the deposit broker definition, then deposits placed at IDIs via an agent or nominee that meet an exception to the definition of deposit broker (for example, the primary purpose exception), will be nonbrokered. If, however, the third party intermediary is, for example, providing matchmaking functions for the agent or nominee and insured depository institutions, as defined in this final rule, then it would meet the ''facilitation'' part of the deposit broker definition, and the deposits placed by or through the intermediary would be brokered deposits, regardless of the status of the agent or nominee.

In the case of the primary purpose exception, IDIs that receive deposits from agents or nominees that meet the primary purpose exception should be aware of any other third parties involved in the placement of deposits and whether those other third parties meet the deposit broker definition in order to properly complete their Consolidated Reports of Condition and Income (''Call Reports''), which require reporting of brokered deposits held by IDIs. If such other third parties meet the definition of deposit broker, deposits placed by or through that third party are considered brokered.

See section I(C)(3)(h) for further discussion of this topic in the context of designated exceptions subject to the notice requirement and the application process.

3. Notice and Application Process for the Primary Purpose Exception

Under the proposal, entities that place deposits at insured depository institutions under the business relationships that were deemed to meet the primary purpose exception would have been subject to expedited processing under the application process. The FDIC is revising this part of the proposed application process and, under the final rule, will no longer require applications for those two business relationships or for the additional designated business relationships described in this final rule. The purpose of this change from the proposal is to streamline the process for entities (or business arrangements) that meet a bright-line primary purpose exception. In other words, the FDIC has already evaluated these business relationships as part of this rulemaking process and has determined that they meet the primary purpose exception. As such, entities will not need to go through an application process if they are placing, or facilitating the placement of, deposits as part of a business relationship that is a designated exception under this final rule.

a. Notice Requirement

For two of the designated exceptions—the ''25 percent'' and the ''enabling transactions'' business relationships—the FDIC is requiring that third parties submit a written notice to the FDIC indicating that the third party will rely upon the applicable designated exception.[50] The notice may also be submitted by an insured depository institution that is receiving deposits from the third party.

Upon the FDIC's receipt of the notice, the third party that is the subject of the notice may rely upon the applicable designated exception for a particular business line. The FDIC will establish an electronic process for the receipt of notices. This process will include providing the notice filer with an immediate acknowledgement of receipt. The FDIC may, however, at its discretion, and at any time, including during the supervision and examination of an insured depository institution, require the notice filer to provide additional information. Such requests generally will be limited to verifying that the third party meets the criteria for the applicable designated exception, and the FDIC generally expects to only make such requests if there is reason to believe that the third party does not meet, or no longer meets, the criteria for the applicable designated exception. The FDIC also may occasionally request other information, such as descriptions of the services provided by any additional third parties involved in the

[50] Entities that qualify for other designated exceptions detailed above are not subject to a notice, application, or reporting process. The applicable specific contents for the two types of notice submissions are provided in section I(C)(3)(b).

deposit placement arrangement that may meet the deposit broker definition.[51] The FDIC will only request information specifically relevant to whether or not the deposits being placed are brokered. If the FDIC learns that the entity no longer meets the criteria of the designated exception or that information provided in a notice or subsequent reporting was inaccurate, or the entity fails to submit required reports, the FDIC may, with notice, revoke the entity's primary purpose exception.[52]

The FDIC is requiring a notice for the ''25 percent'' and ''enabling transactions'' designated exceptions, and not for the other designated exceptions identified in this final rule, because eligibility for those two designated exceptions would be difficult for the FDIC or an IDI to verify or monitor without access to the contents of the notice (which are described below). The other designated exceptions generally relate to more specific deposit placement arrangements and describe criteria that are less difficult to verify or monitor. The FDIC may, or may not, also decide to require a notice for any additional designated exceptions that are identified after the issuance of this final rule, and the FDIC expects such decisions to be based on similar analysis to that described in this paragraph.

The final rule also requires that third parties that notified the FDIC of reliance on a designated exception submit a subsequent notice to the FDIC if the third party no longer meets the primary purpose exception.

b. Notice Contents and Reporting Requirement

The written notice that an entity submits will need to include (1) the designated exception upon which the entity is relying; (2) a brief description of the business line; (3) the applicable specific contents for the designated exception; (4) a statement that there is no involvement of any additional third party who qualifies as a deposit broker, or a brief description of any additional third party that may qualify as a deposit broker; and (5) if the notice is provided by a nonbank entity, a list of the IDIs that are receiving deposits by or through the particular business line at the time that the notice is filed. For third parties that meet the primary purpose exception based on the ''25 percent'' designated exception the applicable specific contents are:

- The total amount of customer assets under administration by the third party for that particular business line; and
- the total amount of deposits placed by the third party on behalf of its customers, for that particular business line, at all depository institutions.[53]

For third parties that meet the primary purpose exception based on the ''enabling transactions'' designated exception the applicable specific contents are:

- Contractual evidence that there is no interest, fees, or other remuneration being paid to any customer accounts, and
- a certification that all customer deposits are in transaction accounts.

Third parties, or insured depository institutions, that submit a notice under the ''25 percent'' test will be required to provide reporting on a quarterly basis to the FDIC. The report will need to include updates to the figures that were provided as part of the original notice submission.

For those that submit a notice under the ''enabling transactions'' test, the filing entity will need to provide an annual certification that the third party continues to place all customer funds at depository institutions into transaction accounts and that customers do not receive or accrue any interest, fees, or other remuneration.

c. Overview of the Application Process

The FDIC is finalizing the proposed application process for entities that seek to qualify for the primary purpose exception but that do not meet a designated exception. As part of this process, an entity can submit an application to the FDIC. For purposes of the application process, the term ''applicant'' includes an insured depository institution or a nonbank third party[54] that meets the ''deposit broker'' definition by either placing (or facilitating the placement of) customer deposits at insured depository institutions and that seeks to be excluded from that definition through the primary purpose exception. If an application is approved, the agent or nominee will be considered to meet the primary purpose exception for a particular business line.

As mentioned, an applicant may be an insured depository institution that applies to the FDIC on behalf of a third party seeking a determination that the third party meets the primary purpose exception. In this case, if appropriate, the FDIC will evaluate the third party's relationships with all IDIs in which the third party places, or facilitates the placement of, deposits. An approval that a third party meets the primary purpose exception based on an application by an IDI on behalf of the third party might be applicable to all deposit placements by that third party at any other IDI(s) to the extent that the deposit placement arrangements with the other IDI(s) are the same as the arrangement between the applicant and the third party. The FDIC is of the view that that an agent or nominee who seeks a primary purpose exception is likely to apply on its own behalf, given that the information required to complete an application will be in possession of the agent or nominee.

Under the proposal, applicants would have received a written determination from the FDIC within 120 days of a complete application, unless extended by the FDIC with notice if necessary. A commenter requested more clarity around the proposed timeline, and suggested additional timelines for certain steps in the process. The FDIC is providing additional clarity, consistent with the intent of the proposal, that the FDIC will notify an applicant within 45 days of submission if an application is not complete, and that an extension, if necessary, beyond the initial 120 days may last for a maximum of 120 additional days.

The FDIC will approve applications submitted under this process if the application demonstrates to the FDIC's satisfaction, with respect to the particular business line under which the third party places or facilitates the placement of deposits, that the primary purpose of the third party, for that business line, is a purpose other than the placement or facilitation of placement of deposits. Approved applicants may be subject to periodic reporting requirements to enable the FDIC to ensure that the applicant continues to meet the exception.

d. Application Contents

An application must include, to the extent applicable, at a minimum:[55]

[51] *See* section I(C)(3)(h) for further discussion on requests for additional information related to additional third parties.

[52] If a primary purpose exception is revoked due to an inaccurate notice or report, or due to a failure to submit a required report, but the entity continues to satisfy the criteria of the designated exception, the entity may refile a notice with accurate information.

[53] The total amount of deposits placed by the third party should be exclusive of the amount of brokered CDs being placed by the third party, which is treated as a separate business line.

[54] The FDIC will look to each separately incorporated legal entity as its own ''third party'' for purposes of this application process. IDIs may submit an application on behalf of a third party that is placing deposits with the IDI.

[55] A description of the application contents for agents or nominees seeking the primary purpose

Continued

(1) A description of the deposit placement arrangements between the third party and insured depository institutions for the particular business line, including the services provided by any relevant third parties;

(2) A description of the business line for which the applicant is filing an application;

(3) A description of the primary purpose of the particular business line;

(4) The total amount of assets under administration by the third party;

(5) The total amount of deposits placed by the third party at all insured depository institutions, including the amounts placed with the applicant, if the applicant is an insured depository institution. This includes the total amount of term deposits and transactional deposits placed by the third party, but should be exclusive of the amount of brokered CDs being placed by that third party;

(6) Revenue generated from the third party's activities related to the placement, or the facilitating of the placement, of deposits;

(7) Revenue generated from the third party's activities not related to the placement, or the facilitating of the placement, of deposits;

(8) A description of the marketing activities provided by the third party to prospective depositors;

(9) The reasons the third party meets the primary purpose exception;

(10) Any other information the applicant deems relevant; and

(11) Any other information that the FDIC determines is necessary to complete its review.

The application also should include supporting documentation and relevant contracts related to the items above. The FDIC retains authority to request additional information at any time during its review. The FDIC's review of whether a third party meets the primary purpose exception will be based on the application and all supporting information provided.

e. Reporting for Approved Applicants

Approved applicants may be subject to periodic reporting requirements. These reporting requirements will allow the FDIC to monitor the applicability of the primary purpose exception and ensure that the FDIC is aware of any material changes to the criteria under which the FDIC approved the application. The FDIC will describe specific reporting requirements, including the frequency and any calculation methodology, as part of its written approval for a primary purpose exception. The FDIC does not expect to require ongoing reporting in all cases. The FDIC will decide whether to require reporting, and tailor such reporting if appropriate, on a case-by-case basis, depending on the type of information that the FDIC relies upon to determine that a particular agent or nominee meets the primary purpose exception. Reporting will not be required more frequently than quarterly.

f. Monitoring for IDIs

Under the proposed rule, an IDI that accepted deposits from a third party that relies upon the primary purpose exception would have been responsible for monitoring the nonbank third party's eligibility for the primary purpose exception. The proposal further noted that when establishing a contractual relationship with a nonbank third party for the placement of deposits that may be classified as nonbrokered due to the primary purpose exception, the IDI may wish to consider the reporting and monitoring requirements described here. The FDIC received a number of comments that these expectations would be difficult to manage or unworkable. Given the potential volume of third parties that could qualify for the primary purpose exception, and the idiosyncratic business models that such third parties may have, the FDIC agrees that this expectation is not appropriate. Instead, under the final rule, an IDI that accepts deposits from a third party that relies on the primary purpose exception would be expected to be able to access records of the nonbank third party's eligibility for the primary purpose exception, including copies of the notices delivered to the FDIC and any accepted applications. The FDIC also expects that if an IDI has reason to believe that a third party that qualified for a primary purpose exception no longer qualifies for the primary purpose exception, for example due to a change in business model, the IDI would notify the FDIC and its primary financial regulator and report the deposits as brokered.

g. Requesting Additional Information, Requiring Re-Application, Imposing Additional Conditions, and Withdrawing Approvals

At any time after approval of an application, the FDIC may, at its discretion, and at any time, including during the supervision and examination of an insured depository institution, require an entity whose application has been approved to provide additional information. Such requests generally will be limited to verifying that the entity continues to satisfy the terms of the approved application, and the FDIC generally expects to only make such requests if there is reason to believe that the entity does not meet, or no longer meets, the terms of the approved application. The FDIC also may occasionally request other information, such as the services provided as part of the deposit placement arrangement by any additional third parties that may meet the deposit broker definition. The FDIC will only request information specifically relevant to whether or not the deposits being placed are brokered. If the FDIC learns that the entity no longer meets the terms of the approved application, for example because the entity has undergone material changes to its business that renders the business no longer eligible for the primary purpose exception, or that information provided in an application or subsequent reporting was inaccurate, the FDIC may, with written notice and adequate justification, require the entity to submit a new application for approval, impose additional conditions on the previously granted approval, or withdraw a previously granted approval.

A commenter requested that the FDIC clarify that the FDIC would only modify or withdraw an approval if there is a material change in the facts or circumstances relied on by the FDIC in granting its initial approval. As noted above, the FDIC would modify or withdraw an application if the FDIC learns that the entity no longer meets the terms of the approved application or if information provided in an application or subsequent reporting was inaccurate. Additionally, the FDIC generally expects to give an entity with an approved application an opportunity to reapply or adjust its business relationships prior to withdrawing, or imposing additional conditions, on a previously granted approval.

h. Additional Third Parties

As noted above, the FDIC may request additional information following the filing of a notice or application about additional third parties involved in the arrangement. If the FDIC finds that a third party applicant or notice filer (or a third party on whose behalf an IDI has submitted a notice or application) meets the primary purpose exception, but another third party involved in the arrangement meets the deposit broker definition, the FDIC would notify the applicant and the other third party of this finding. The absence of such a

exception under the ''enabling transactions'' business relationship because they place all customer deposits at depository institutions into transactional accounts but the customer earns some amount of interest, fees or other remuneration are provided in section I(C)(2)(b)(ii)(A)(2).

finding does not mean that no additional third party meets the deposit broker definition. The FDIC expects to request such additional information and make such findings only in certain circumstances, and not on a regular or frequent basis, and entities should not rely on the FDIC to decide whether additional third parties are deposit brokers.

4. Effective Date and Extended Compliance

Except as specifically provided here, the final rule will take effect on April 1, 2021, and will be reflected in Call Report Data due June 30, 2021. Full compliance with the regulation is extended to January 1, 2022. The extended compliance date is intended to provide sufficient time for financial institutions to put in place systems to implement the new regulatory regime and to allow the FDIC to develop internal processes and systems to ensure a consistent and robust review process.

Notices. Starting April 1, 2021, an entity that wishes to rely upon a designated exception for the primary purpose exception described in this final rule that requires a notice submission must file a notice, and comply with any applicable reporting requirements. However, the full compliance date of January 1, 2022, will allow entities to continue to rely upon existing staff advisory opinions or other interpretations that predated this final rule in determining whether deposits placed by or through an agent or nominee are brokered deposits. After January 1, 2022, entities may no longer rely on upon staff advisory opinions or other interpretations that predated this final rule, and to the extent that such entities instead opt to rely on a designated exception for which a notice is required, a notice must be filed. After January 1, 2022, the advisory opinions and other publicly available interpretations set forth in Appendix 1 to this notice will be moved to inactive status.

Applications. Similarly, starting April 1, 2021, entities that wish to apply for a primary purpose exception, as described in section I(C)(3)(c–g), may submit an application starting on that date. The FDIC will begin its application review as soon as possible, but no later than September 3, 2021. Written determinations for applications submitted on or before September 3, 2021, will be provided by January 1, 2022 (consistent with the 120-day review period), unless extended, with notice, if necessary. As stated above, however, the full compliance date provision will allow entities who rely on the primary purpose exception the option to continue to rely on existing staff advisory opinions or other interpretations that predated this final rule until January 1, 2022. After that date, such entities will no longer be permitted to rely on existing staff advisory opinions or other interpretations that predated this final rule and must have an application, if appropriate.

5. Prior FDIC Staff Advisory Opinions

In the Brokered Deposits NPR, the FDIC indicated that it would review existing advisory opinions to determine those that should be codified in the final rule and those that are outdated and should be rescinded. This section reviews and discusses the comments relating to prior FDIC staff advisory opinions. The FDIC notes, however, that this final rule will allow certain entities that have relied upon previous staff opinions regarding the primary purpose exception to continue to rely upon the primary purpose exception under designated exemptions described.[56] Moreover, and as provided above in section I(C)(4), the FDIC will allow entities to continue to rely upon all previous staff advisory opinions related to brokered deposits until January 1, 2022.

a. Comments on Prior FDIC Staff Advisory Opinions

A significant number of commenters addressed this aspect of the Brokered Deposits NPR. Of those who commented, the majority urged the FDIC to grandfather all existing advisory opinions, particularly those opinions where the staff had previously interpreted the primary purpose exception as applying. A few commenters identified specific advisory opinions that they believed should be retained or codified, but the general view was that all advisory opinions should continue to be available and active.

One banker recommended that the FDIC retain existing advisory opinions that conclude that specific company activities do not make the company a deposit broker, while several other bankers urged the FDIC to grandfather all relationships based on current advisory opinions and suggested that such relationships be exempt from the definition of deposit broker. One banker stated that firmly-established business relationships should be protected by maintaining all existing FDIC advisory opinions, while a second banker stated that the FDIC should maintain all advisory opinions to avoid dismantling established partnerships with industry participants who rely on current advisory opinions to provide their services to banks. Still another banker suggested that the FDIC codify certain long-standing, frequently relied-upon advisory opinions and repeal or update outdated advisory opinions.

A few commenters also addressed the process of reviewing and rescinding, or codifying, any advisory opinions. A state bankers' association called on the FDIC to publicly indicate which advisory opinions would remain and allow a three-year transition to conform to the new rule. A national trade group representing the banking industry suggested that the FDIC implement a formal notice and comment process for rescission of advisory opinions, and stated that any exemptions from previously granted advisory opinions should remain in effect. The commenter further stated that any exemptions that are revoked should have a 3-year transition period. A second bank trade association wrote that the FDIC should only rescind the advisory opinions after a notice and comment period.

b. Final Rule Discussion of Prior Staff Advisory Opinions

As part of this rulemaking process, the FDIC evaluated all previous FDIC staff advisory opinions related to brokered deposits to identify those that are no longer relevant or applicable based upon the revisions made as part of this final rule. The FDIC also, as part of its review, evaluated whether previous FDIC staff advisory opinions may continue to be relied upon and may be applicable under the new framework of this final rule.

As a result of this review, the content of some of the opinions have been included in this final rule.[57] However, upon the full compliance date of the final rule (January 1, 2022), previous staff advisory opinions will be moved to inactive status on the FDIC's website.[58] The FDIC recognizes that given the significant changes in the regulation, it is likely that in most, if not all, cases, the analysis contained in the various advisory opinions will no longer accurately reflect the regulation, even though in many cases the result will be the same. Codifying all previous staff opinions would thus result in the existence of two parallel regulatory

[56] A discussion of the primary purpose exception and the advisory opinions provided in section I(C)(2)(b)(ii)(B).

[57] *See* discussion on ''designated exceptions'' in section I(C)(2)(b)(ii)(A)–(B).

[58] *See* list of publicly available FDIC staff advisory opinions and FILs related to section 29 in Appendix 1.

regimes for brokered deposits that would make it difficult for entities and banks to understand the interpretations that apply for their particular deposit placement arrangement. Instead, the FDIC has (1) provided additional clarity on the ''facilitation'' part of the deposit broker definition and (2) included in its list of designated exceptions a number of the business arrangements that have previously been viewed by staff at the FDIC to meet the primary purpose exception. In addition, and as noted earlier, the FDIC has established an extended compliance period for the final rule to ensure that entities who are impacted have ample time to adjust previous arrangements, if necessary.

Those entities such as listing services, marketing firms, or certain companies that design their own deposit products with special features, which have relied upon previous staff advisory opinions outside of the primary purpose exception context to develop their business in a way to avoid meeting the ''deposit broker'' definition, will need to review the new criteria developed under this final rule to determine whether their current arrangements meet the deposit broker definition. Below is a discussion of these entities and how they fit within this final rule.

Listing services. A ''listing service'' is a company that compiles information about the interest rates offered by banks on deposit products. Through the years, staff at the FDIC have developed criteria to help determine whether a ''listing service'' meets the ''deposit broker'' definition. Under this final rule, the FDIC anticipates that whether a listing service, or a similar service that posts information about bank rates, is a deposit broker will likely depend on whether the service meets the new criteria under the ''facilitation'' part of the deposit broker definition. Based upon the new ''facilitation'' definition, a listing service that is passively posting rate information and sending trade confirmations between the depositor and the bank is unlikely to be a deposit broker. However, if a listing service provides services that meet one of the three prongs of the ''facilitation'' definition, then it would be considered a deposit broker.

Entities that Provide Marketing Services. Some insured depository institutions attempt to attract new depositors through advertising or referrals by third parties in exchange for fees based upon the volume of deposits placed. In these cases, and under the assumption that the deposits are being placed directly by the depositors, the third parties generally would not meet the ''deposit broker'' definition, unless they took actions that meet one of the three prongs of the ''facilitation'' definition. Under the definition of facilitation, it is unlikely that a third party that is, for example, providing general marketing or advertising services on behalf of a bank (*e.g.,* providing a link on its website) in exchange for a volume-based fee, will meet the deposit broker definition.

Entities that Design Deposit Products. Some third parties design deposit products with special features, such as deposit accounts that produce interest or rewards based on account activity. If a company merely designs deposit products or deposit accounts for banks, and markets the banks that offer the deposit products, it would not likely meet the deposit broker definition unless it places deposits at more than one IDI or meets one of the three prongs of the ''facilitation'' definition.

D. Discussion of Certain Other Deposit Placement Arrangements Raised by Commenters

In response to the NPR, some commenters asked how deposits placed through certain third parties would be treated under the primary purpose exception. These arrangements are not being designated as meeting the primary purpose exception, however, the FDIC acknowledges that under certain circumstances, an agent or nominee acting under one of these business relationships could meet one of the designated exceptions.

Trust Companies. Trust companies that administer trusts sometimes place funds at IDIs while acting in a fiduciary capacity for a number of clients and accounts. The FDIC understands that these trust companies invest their customer assets under administration in a variety of different investment products, which may include deposit accounts. As such, the FDIC believes that some trust companies will be eligible to meet the primary purpose exception under the ''25 percent test'' because they place less than 25 percent of customer assets under administration at IDIs. Additionally, a trust company that places customer deposits, as described above, at only one IDI would not qualify as a deposit broker.

Moreover, section 29 provides targeted statutory exceptions to the ''deposit broker'' definition for specific trust activities and one for trust departments of IDIs.[59] Trust companies that place customer deposits with IDIs that do not qualify for any of the exceptions listed above will also be able to avail themselves of the primary purpose exception through the application process provided in this final rule, and the application would be approved if the trust company demonstrated that providing traditional trust services, rather than placing deposits, was the trust company's primary purpose.

Companies that Provide Certain Software Services. Some companies provide accounting, cash management, and other administrative support via software services to clients. These companies, on behalf of its clients, place deposits at either one or a group of preferred or partner banks that are sometimes integrated with its software services. Because these companies place deposits at IDIs, they meet the definition of ''deposit broker.'' Commenters, in response to the NPR, argued that such software companies (*e.g.,* bankruptcy management software companies) should meet the primary purpose exception because their primary relationship with its customers is to provide accounting services and not the placement of deposits. The FDIC notes that software providers may place customer deposits into transactional accounts that pay no (or nominal amounts of) interest, fees, or other remuneration to the customer. As such, these software providers may be eligible to meet the enabling transactions test for the primary purpose exception. Additionally, a software provider that places customer deposits, as described above, at only one IDI would not qualify as a deposit broker. If such a software provider does not meet the enabling transactions test and applies for a primary purpose exception, the FDIC would approve the application if the software provider demonstrates that providing software services, rather than placing deposits, is the primary purpose of the business relationship.

E. Other Supervisory Matters Related to Brokered Deposits

1. Brokered Deposits and Assessments

In the proposed rule, the FDIC noted that it planned to consider modifications to its deposit insurance assessment regulations in light of the changes made to the brokered deposits regulation. This was one of several changes the FDIC was considering to make its large bank pricing model more risk-sensitive. Given the economic uncertainty surrounding the COVID–19 pandemic, the FDIC decided to postpone consideration of such changes to its deposit insurance assessment pricing. As noted below, institutions will be required to report to the FDIC or on the Call Report certain types of

[59] *See* 12 U.S.C. 1831f(g)(2).

deposits that will not be considered brokered deposits under the final rule. The FDIC plans to monitor the data resulting from such reporting and will consider in the future whether modifications to deposit insurance assessment pricing related to certain types of funding concentrations are warranted, consistent with the statutory requirement that the assessments be risk-based.

2. Reporting of Certain Deposits on Call Reports

The proposed rule indicated that the FDIC will consider requiring reporting of deposits that are excluded from being reported as brokered deposits because of the application of the primary purpose exception. As part of the final rule implementing a stable funding requirement for certain large banking organizations (also known as the net stable funding ratio or ''NSFR'') the FDIC, along with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, stated their intent to revise the Call Reports to obtain data that may help evaluate funding stability of sweep deposits over time to determine their appropriate treatment under the liquidity regulations. The FDIC further intends to monitor this information to assess the risk factors associated with sweep deposits and determine assessment implications, if any. Any changes to reporting requirements applicable to the Call Reports, and their instructions, would be effectuated in coordination with the Federal Financial Institutions Examination Council in a separate Paperwork Reduction Act notice.

3. Additional Supervisory Matters

The FDIC recognizes that, under the final rule, categories of deposits that are currently considered brokered will instead be nonbrokered. The FDIC will continue to take such supervisory efforts as may be necessary to ensure that banks are operating in a safe and sound manner. Nothing in the final rule is intended to limit the FDIC's ability to review or take supervisory action with respect to funding-related matters, including funding concentrations, that may affect the safety and soundness of individual banks or the industry generally. FDIC examiners will continue to review funding as part of safety and soundness examinations, regardless of whether or not the deposits used by the IDI are brokered. Among other things, examiners will review whether banks are reporting their deposits appropriately on Call Reports.[60] The FDIC will work to ensure that any such decisions by examiners are made consistently. Additionally, this regulation addresses whether certain deposits are considered brokered, but nothing in this final rule changes the FDIC's or other federal regulators' authorities under section 8 or section 39 of the FDI Act.

F. Alternatives

The FDIC is adopting these comprehensive changes to the brokered deposit regulations after considering comments received pursuant to the ANPR and NPR and evaluating alternative options for modernizing the regulations. The FDIC considered a number of alternative approaches, including taking more incremental approaches through which more limited changes would be made. Additionally, the FDIC considered more narrowly revisiting certain existing staff interpretations to identify those that should be updated. However, the FDIC ultimately determined that the best course of action was to take a fresh, holistic look at the regulations and interpretations, and establish a new framework that reflects technological and other changes in the banking industry over the past three decades and is consistent with the FDI Act.

G. Expected Effects

As described previously, the final rule amends the FDIC's regulations that implement provisions of section 29 regarding brokered deposits. The final rule creates a new framework for analyzing certain provisions of the statutory definition of ''deposit broker.'' Further, the final rule amends one of the ten regulatory exceptions to the definition of ''deposit broker.'' The aggregate effect likely would be that some amount of deposits currently reported as brokered deposits will no longer be so reported.

As of June 30, 2020, there were 5,075 insured depository institutions holding approximately $21.2 trillion in assets and $15.6 trillion in domestic deposits. Of those domestic deposits, $1.2 trillion (7.7 percent) are currently classified as brokered deposits. Approximately 38 percent (1,932) of FDIC-insured institutions reported some positive amount of brokered deposits. These insured institutions accounted for the vast majority of banking industry assets and deposits—almost $19.5 trillion (92.0 percent) of assets and almost $14.1 trillion (90.4 percent) of domestic deposits.[61]

Traditional brokered CDs will continue to be defined by the rule as brokered deposits and subject to the associated statutory and regulatory restrictions. Certain types of deposits, notably deposits placed by agents or nominees that meet one of the identified ''designated exceptions'' or otherwise satisfy criteria set forth in the revisions made in this final rule to the primary purpose exception will not be considered brokered deposits. The amount of deposits currently reported as brokered that may be re-designated as non-brokered as a result of the rule may be material. [62] However, a reliable estimate of this change in designation is not possible with the information currently available to the FDIC.

There are potentially five broad categories of effects of the rule: Effects on consumers and economic activity; effects applicable to potentially any insured institution; effects applicable to less than well-capitalized institutions; effects applicable to nonbank entities that may or may not be deemed deposit brokers; and reporting compliance effects on covered entities.

1. Consumers and the Economy

The final rule amends the FDIC's brokered deposit regulations to reflect recent technological changes and innovations. The rule generates benefits to banks and consumers if deposit placement arrangements that do not present undue funding risk are not classified as brokered deposits. Changes and innovations in deposit placement activity are likely to continue, suggesting that demand for, and utilization of, certain types of deposit accounts currently classified as brokered are likely to grow in the years to come. These could include the use of technology services that help enable payments and online marketing channels that refer customers to certain banks. To the extent that the rule results in such deposits as being non-brokered, it could support ease of access to deposit placement services for U.S. consumers. Unbanked or underbanked customers, for example, may benefit from increased ease of access to deposit placement services because banks would be more willing to accept deposits that would be no longer considered brokered under the final

[60] Examiners will not, however, require that an IDI treat a third party as a deposit broker if the third party has qualified for the primary purpose exception through a designated exception or an approved application.

[61] Call Report data, June 30, 2020.

[62] A number of the ''designated exceptions'' identified as meeting the primary purpose exception are based upon business relationships that staff at the FDIC previously viewed as meeting the primary purpose exception.

rule. Additionally, to the extent that the rule supports greater utilization of deposits currently classified as brokered deposits, but classified as non-brokered under the rule, it could increase the funds available to insured depository institutions for lending to U.S. consumers. If the rule does result in an increase in bank lending, some associated increase in measured U.S. economic output would be expected, in part because the imputed value of the credit services banks provide is a component of measured GDP.

2. All Insured Institutions

The rule could immediately affect the 1,932 FDIC-insured institutions currently reporting brokered deposits. Going forward, the rule could affect all 5,075 FDIC-insured institutions whose decisions regarding the types of deposits to accept could be affected.

The final rule benefits insured institutions and other interested parties by providing greater legal clarity regarding the classification and treatment of brokered deposits. As result of this increased clarity, the final rule reduces the extent of reliance by banks and third parties on FDIC Staff Advisory opinions and informal written and telephonic inquiries with FDIC staff. This would have two important benefits. First, the likelihood of inconsistent outcomes, where some institutions may report certain types of deposits as brokered and others do not, would be reduced. Second, to the extent the classification of deposits as brokered or non-brokered can be clearly addressed in regulation, the need for potentially time-consuming staff analyses can be minimized.

The FDIC has heard from a number of insured institutions that they perceive a stigma associated with accepting brokered deposits. Historical experience has been that higher use of deposits currently reported to the FDIC as brokered has been associated with higher probability of bank failure and higher DIF loss rates.[63] The funding characteristics of brokered deposits, however, are non-uniform. For example, brokered CDs are often used by bank customers searching for relatively high yields and safety with deposit insurance, rather than as part of a relationship with a bank, and as such these deposits may be less stable and more subject to deposit interest rate competition. The behavior of other types of deposit placement arrangements, such as deposits placed through certain deposit sweep arrangements or that underlie prepaid card programs, may be more based on a business relationship than on interest rate competition. Given limitations on available data, however, historical studies have not been able to differentiate the experience of banks based on the different types of deposits accepted. To the extent the rule reduces bankers' perception of a stigma associated with certain types of deposits, more institutions may be incentivized to accept such deposits.

The rule could incentivize the development of banking relationships between banks and other firms. The new opportunities could spur growth in the types of companies that provide deposit placement services, particularly for third parties that receive the primary purpose exception, potentially resulting in greater access to, or use of, bank deposits by a greater variety of customers. It is difficult to accurately estimate such potential effects with the information currently available to the FDIC, because such effects depend, in part, on the future commercial development of such activities.

FDIC deposit insurance assessments would be affected by the changes, potentially affecting any insured institution that currently accepts brokered deposits or might do so in the future. Since 2009, insured institutions with a significant concentration of brokered deposits may pay higher quarterly assessments, depending on other factors. To the extent that deposits currently defined as brokered would no longer be considered brokered deposits under this rule, a bank's assessment may decrease, all else equal. Certain calculations required under the Liquidity Coverage Ratio and NSFR rules applicable to some large banks could also be affected by the rule. Available data do not allow for a reliable estimate of the amount of deposits currently designated as brokered that would no longer be designated as such under the rule, and consequently do not allow for an estimate of effects on assessments or the reported Liquidity Coverage Ratio and NSFR.

Insured institutions could benefit from the rule by having greater certainty and greater access to funding sources that would no longer be designated as brokered deposits, thereby easing their liquidity planning in the event they fall below well capitalized and become subject to the restrictions set forth in the law and regulations and reducing the likelihood that a liquidity failure of an otherwise viable institution might be precipitated by the brokered deposit regulations. Another benefit of the rule could result if greater access to funding sources supported insured institutions' ability to provide credit. However, these effects are difficult to estimate because the decision to receive third party deposits depends on the specific financial conditions of each bank, fluctuating market conditions for third party deposits, and future management decisions.

3. Less Than Well-Capitalized Institutions

As discussed previously, the acceptance of brokered deposits is subject to statutory and regulatory restrictions for banks that are not well capitalized. Adequately capitalized banks may not accept brokered deposits without a waiver from the FDIC, and banks that are less than adequately capitalized may not accept them at all. As a result, adequately capitalized and undercapitalized banks generally hold less brokered deposits. By generally reducing the scope of deposits that are considered brokered, the rule allows not well capitalized banks to increase their holdings of deposits that are currently reported as brokered but will not be reported as brokered under the final rule. As of June 30, 2020, there are only 10 adequately capitalized and undercapitalized banks.[64] These banks hold approximately $2.5 billion in assets, $1.7 million in domestic deposits, and $21.7 million in brokered deposits.[65] These banks could be directly affected by the rule in that they could potentially accept more or different types of deposits currently designated as brokered.

Broadly speaking, with respect to future developments, another aspect of brokered deposit restrictions is that, consistent with their statutory purpose, they act as a constraint on growth and risk-taking by troubled institutions. Conversely, as noted previously, access to funding can prevent needless liquidity failures of viable institutions.

4. Entities That May or May Not Be Deposit Brokers

The revisions to the brokered deposit regulations would likely give rise to some activity by nonbank third parties seeking to determine whether they are, or are not, deposit brokers under the

[63] *See* FDIC's 2011 Study on Core and Brokered Deposits, July 8, 2011.

[64] Information based on June 30, 2020 Consolidated Reports of Condition and Income. The 10 institutions do not include any quantitatively well capitalized institutions that may have been administratively classified as less than well capitalized. See generally, FDIC—12 CFR 324.403(b)(1)(v); Board of Governors of the Federal Reserve System—12 CFR 208.43(b)(1)(v); Office of the Comptroller of the Currency—12 CFR 6.4(c)(1)(v).

[65] Call Report Data, June 30, 2020.

rule. This may include submitting notices or filing applications by some third parties that seek to avail themselves of the primary purpose exception, or by banks submitting notices or filing applications on behalf of third parties. In certain circumstances, ongoing reporting or certification by these entities is also expected under the final rule.

5. Reporting Compliance Costs

As previously discussed, the final rule establishes some reporting obligations for certain insured depository institutions or nonbank third parties that meet the ''deposit broker'' definition by either placing (or facilitating the placement of) customer deposits at insured depository institutions but meet the ''primary purpose'' exception. Specifically, the rule provides that entities that wish to invoke two of the ''designated exceptions''—the ''25 percent'' and ''enabling transactions'' business arrangements—will be required to submit a notice to the FDIC. These entities will also be subject to either a quarterly reporting or annual certification requirement.

The final rule also establishes an application process under which any agent or nominee that seeks to avail itself of the primary purpose exception, or an insured depository institution acting on behalf of an agent or nominee, and does not meet one of the ''designated exceptions,'' could request that the FDIC consider the agent or nominee as meeting the primary purpose exception. Entities that meet the primary purpose exception via an approved application may also be subject to periodic reporting requirements under the final rule.

These reporting requirements will allow the FDIC to monitor the applicability of the primary purpose exception.

Finally, the FDIC may, with notice, revoke a primary purpose exception of a third party that relies on a ''designated exception,'' if the third party no longer meets the criteria for a designated exception, the notice or subsequent reporting is inaccurate, or the notice filer fails to submit the required reports. For approved applications, the FDIC may, under certain circumstances and with adequate justification, require the entity to refile a notice, submit an application, reapply for approval, impose additional conditions on the approval, or withdraw a previously granted approval, with notice to the entity.

There were 3,517 Financial Industry Regulatory Authority (''FINRA'') registered broker-dealer firms in 2019.[66] Some of the 3,517 broker-dealers may not engage in activity which would meet the definition of ''deposit broker'' but for meeting the primary purpose exception through the ''25 percent test,'' while some firms that do engage in such activity may not be among the 3,517 FINRA registered broker-dealers. In the absence of data to estimate future respondents, consistent with the changes in the rule relative to the NPR, and with its Paperwork Reduction Act analysis of this rule, the FDIC assumes that 703 firms will submit notices for a ''designated exception'' under the primary purpose exception based on placing less than 25 percent of customer assets under administration, in the initial year of implementation. Further, the FDIC assumes that 176 firms will submit notices for a ''designated exception'' under the primary purpose exception based on placing less than 25 percent of customer assets under administration, on average each year, an ongoing basis.

According to Census data, there are 1,223 establishments within the industry in which deposit brokers are classified.[67] Not all 1,223 establishments engage in deposit brokering, and some firms which engage in deposit brokering may be classified in another industry. In the absence of data to estimate future respondents, consistent with the changes in the rule relative to the NPR, and with its Paperwork Reduction Act analysis of this rule, the FDIC assumes that 245 firms will submit notices in reliance on the enabling transactions designated exception in the initial year of implementation. Additionally, the FDIC assumes that 245 firms submit applications for a primary purpose exception in the initial year of implementation. Finally, in the absence of data to estimate future respondents, the FDIC assumes that 61 will file a notice in reliance upon the enabling transactions designated exception, or a designated exception identified in the future that requires a notice, and an additional 61 will submit an application, on average each year, on an ongoing basis.

In the initial year of implementation, the FDIC assumes that the notice for the ''25 percent'' business relationship will be three hours to complete on average, and 0.5 hours per quarter each year after that. In the initial year of implementation, the FDIC assumes that the notice for the ''enabling transactions'' will take 5 hours to complete on average, and 0.5 hours each year after that. In the initial year of implementation, the FDIC assumes that the application for entities that do not meet a ''designated exception,'' will take 10 hours to complete on average, and 0.25 hour per quarter each year[68] after that. The FDIC also recognizes there will likely be outliers who spend more or less time on notices, applications, and reporting than the FDIC expects at this time, therefore FDIC believes that the compliance burden realized by affected entities will likely vary from labor hours presented. Therefore, based on the above assumptions and methodology, the FDIC estimates the final rule imposes an annual reporting burden of 5,784 hours for the first year and 497.5 hours each year after that for all affected entities. This equates to estimated compliance costs of $613,740 in the first year and $51,589 each year after that for all affected entities.[69]

Part II. Interest Rate Restrictions

A. Policy Objectives

The policy objective of Part II of this final rule is to ensure that deposit interest rate caps appropriately reflect the prevailing deposit interest rate

[66] 2019 FINRA Industry Snapshot, pg. 13, *https://www.finra.org/sites/default/files/2020%20Industry%20Snapshot.pdf.*

[67] Deposit brokers are classified according to the 2017 North American Industry Classification System as belonging to the ''Miscellaneous Financial Investment Activities'' industry (NAICS code 523999). *See* U.S. Census Bureau, 2017 County Business Patterns Data, available at *https://www.census.gov/data/datasets/2017/econ/cbp/2017-cbp.html.*

[68] This average number reflects that not all approved applications are expected to require ongoing reporting.

[69] For the applications relating to exceptions from the definition of ''deposit broker,'' the FDIC used the wage estimates from the Bureau of Labor Statistics (BLS) ''National Industry Specific Occupational Employment and Wage Estimates: Securities, Commodity Contracts, and Other Financial Investments and Related Activities Sector'' (May 2018), while for the Application for Waiver of Prohibition on Acceptance of Brokered Deposits, the FDIC used the wage estimates from the BLS ''National Industry-Specific Occupational Employment and Wage Estimates: Depository Credit Intermediation Sector'' (May 2018). Other BLS data used were the Employer Cost of Employee Compensation data (June 2019), and the Consumer Price Index (June 2019). Hourly wage estimates at the 75th percentile wage were used, except when the estimate was greater than $100, in which case $100 per hour was used, as the BLS does not report hourly wages in excess of $100. The 75th percentile wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the June 2019 Employer Cost of Employee Compensation data, compensation rates for health and other benefits are 33.8 percent of total compensation. Additionally, the wage has been adjusted for inflation according to BLS data on the Consumer Price Index for Urban Consumers (CPI–U), so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 1.86 percent between May 2018 and June 2019.

environment, while continuing to ensure that less than well capitalized institutions do not solicit or accept deposits by offering interest rates that significantly exceed prevailing rates on comparable deposit products.

B. Background

Under Section 29 of the FDI Act, well capitalized institutions are not subject to any interest rate restrictions. However, the statute imposes interest rate restrictions on insured depository institutions that are less than well capitalized, as defined in Section 38 of the FDI Act. The statutory restrictions are described in detail below.

Brokered deposits accepted pursuant to a waiver and certain reciprocal deposits. Institutions that are less than well capitalized may not pay a rate of interest on brokered deposits accepted pursuant to a waiver, or on reciprocal deposits excluded by Section 29 from being considered brokered deposits, that ''significantly exceeds'' the following: ''(1) The rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the national rate paid on deposits of comparable maturity, as established by the [FDIC], for deposits accepted outside the institution's normal market area.'' [70]

Adequately capitalized institutions. Institutions that are adequately capitalized may not engage in the solicitation of deposits by offering rates that ''are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' [71] For institutions in this category, the statute restricts interest rates in an indirect manner. Rather than simply setting forth an interest rate restriction for adequately capitalized institutions to accept brokered deposits, the statute defines the term ''deposit broker'' to include ''any insured depository institution that is not well capitalized . . . which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' [72] In other words, the depository institution itself is a ''deposit broker'' if it solicits deposits by offering rates significantly higher than the prevailing rates in its own ''normal market area.'' Without a waiver, the institution cannot accept deposits from a ''deposit broker.'' Thus, the institution cannot accept these deposits from itself. In this indirect manner, the statute prohibits institutions in this category from soliciting deposits by offering rates significantly higher than the prevailing rates in the institution's ''normal market area.''

Undercapitalized institutions. In this category, institutions may not solicit deposits by offering rates ''that are significantly higher than the prevailing rates of interest on insured deposits (1) in such institution's normal market area; or (2) in the market area in which such deposits would otherwise be accepted.'' [73]

C. Regulatory Approach

The FDIC has implemented the statutory interest rate restrictions through two rulemakings.[74] While the statutory provisions noted above set forth a basic framework based upon capital categories, they do not provide certain key details, such as definitions of the terms ''significantly exceeds,'' ''significantly higher,'' ''market,'' and ''national rate.'' As a result, the FDIC defined these key terms via rulemaking in 1992. Both the ''national rate'' calculation and the application of the interest rate restrictions were updated in a 2009 rulemaking.

''*Significantly Exceeds*'' *or* ''*Significantly Higher.*'' [75] Through both the 1992 and the 2009 rulemakings, the FDIC has interpreted that a rate of interest ''significantly exceeds'' another rate, or is ''significantly higher'' than another rate, if the first rate exceeds the second rate by more than 75 basis points.[76] In adopting this standard in 1992, and subsequently retaining it in 2009, the FDIC offered the following explanation: ''Based upon the FDIC's experience with the brokered deposit prohibitions to date, it is believed that this number will allow insured depository institutions subject to the interest rate ceilings . . . to compete for funds within markets, and yet constrain their ability to attract funds by paying rates significantly higher than prevailing rates.'' [77]

''*Market.*'' In the FDIC's regulations, as implemented through both the 1992 and 2009 rulemaking, the term ''market'' is ''any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions in the same area.'' [78] The FDIC determines an institution's market area on a case-by-case basis.[79]

The ''*National Rate.*'' As part of the 1992 rulemaking, the ''national rate'' was defined as follows: ''(1) 120 percent of the current yield on similar maturity U.S. Treasury obligations; or (2) In the case of any deposit at least half of which is uninsured, 130 percent of such applicable yield.'' In defining the ''national rate'' in this manner, the FDIC understood that the spread between Treasury securities and depository institution deposits can fluctuate substantially over time but relied upon the fact that such a definition is ''objective and simple to administer.'' [80] By using percentages (120 percent, or 130 percent for wholesale deposits, of the yield on U.S. Treasury obligations) instead of a fixed number of basis points, the FDIC hoped to ''allow for greater flexibility should the spread to Treasury securities widen in a rising interest rate environment.'' Additionally, at the time of the 1992 rulemaking, the FDIC did not have readily available data on actual deposit rates paid and used Treasury rates as a proxy.

Prior to the 2009 rulemaking, yields on Treasury securities plummeted precipitously, driven by global economic uncertainties, which resulted in a ''national rate'' that was lower than deposit rates offered by many institutions. As part of the 2009 rulemaking, with access to data on offered rates available on a substantially real-time basis, the FDIC redefined the ''national rate'' as ''a simple average of rates paid by all insured depository institutions and branches for which data are available.'' [81]

The ''*Prevailing Rate.*'' The FDIC has recognized, as part of its regulation on interest rate restrictions, that

[70] 12 U.S.C. 1831f(e).

[71] 12 U.S.C. 1831f(g)(3).

[72] *Id.*

[73] 12 U.S.C. 1831f(h).

[74] 57 FR 23933 (1992); 74 FR 26516 (2009).

[75] The FDIC has not viewed the slight verbal variations in these provisions as reflecting a legislative intent that they have different meaning and so the agency has, through rulemaking, construed the same meaning for these two phrases.

[76] 12 CFR 337.6(b)(2)(ii), (b)(3)(ii) and (b)(4). The FDIC first defined ''significantly higher'' as 50 basis points. 55 FR 39135 (1990). As part of the 1992 rulemaking, commenters suggested that the FDIC define ''significantly higher'' as 100 basis points. In response, the FDIC defined ''significantly higher'' as 75 basis points.

[77] 57 FR 23933, 23939 (1992); 74 FR 26516, 26520 (2009).

[78] 57 FR 23933 (1992); 74 FR 26516 (2009).

[79] 12 CFR 337.6(f).

[80] 57 FR 23933, 23938 (June 5, 1992).

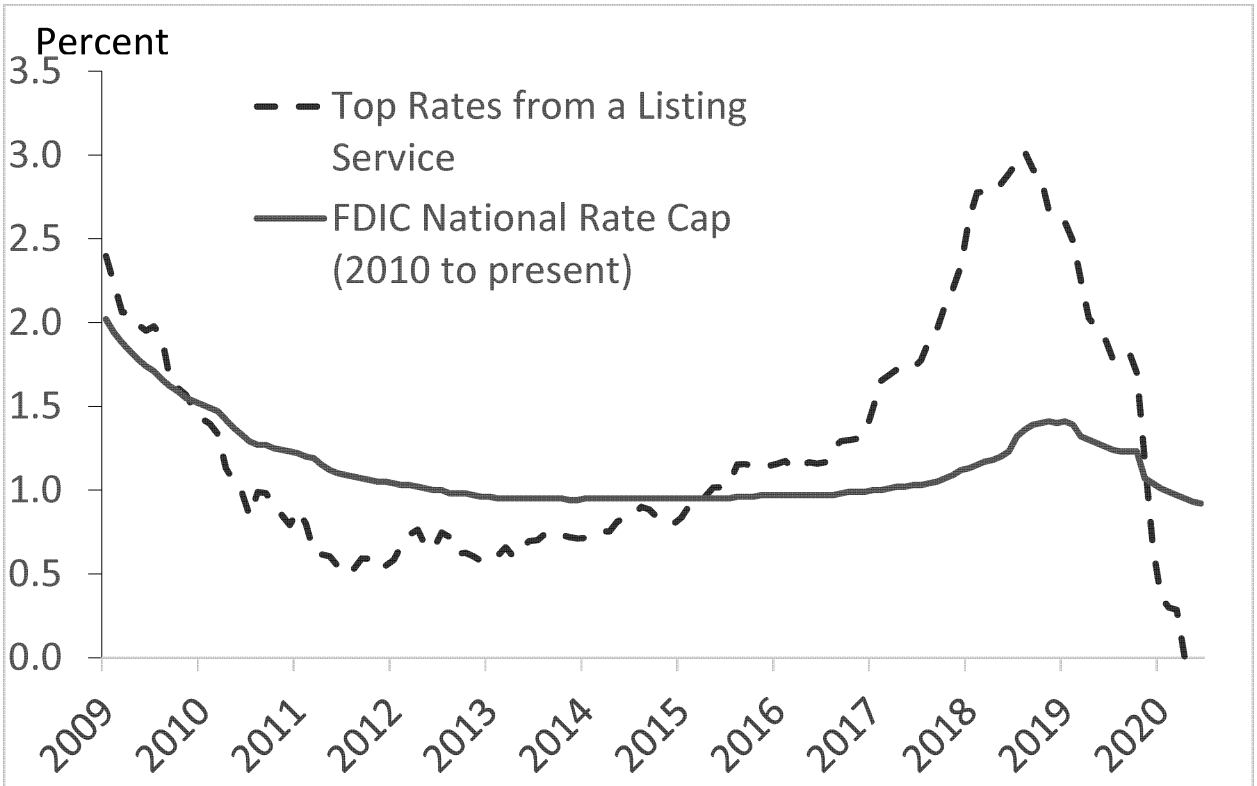
[81] 74 FR 26516 (2009). The 2009 rulemaking also recognized, based on the FDIC's experience, that some institutions still do compete for particular products within their local market areas, and provided a safe harbor for those institutions.

competition for deposit pricing has become increasingly national in scope. Therefore, through the 2009 rulemaking, the FDIC presumes that the prevailing rate in an institution's market area is the FDIC-defined national rate.'' [82]

D. Need for Further Rulemaking

The current interest rate cap regulations became effective in 2010 and were adopted to modify the previous national rate cap (based on U.S. Treasury securities) that had become overly restrictive. Chart 1 below reflects the current national rate cap and the average of the top ten rates paid for a 12-month CD between 2010 and the present.[83] Chart 1 illustrates that between 2010 and approximately the second quarter of 2015, rates on deposits were quite low, even for the top rate payers. For this period, the current regulation's methodology for calculating the national rate, to which 75 basis points is added to arrive at the national rate cap, resulted in a national rate cap that allowed less than well capitalized institutions to easily compete with even the highest rates paid on the 12-month CD during this timeframe.

Chart 1—12-Month CD, Comparison of Listing Service Top Ten Average Payers and the FDIC National Rate Cap, 2010 to Present



Source: RateWatch, QwickRate. Rate cap shown for non-jumbo products(less than $100,000)

However, from about July 2015 through February 2020, the current national rate methodology resulted in a national rate for the 12-month CD that, when 75 basis points were added, resulted in a national rate cap that remained relatively unchanged. During this period, the FDIC observed that the relatively unchanged national rate could restrict less than well-capitalized banks from competing for market-rate funding. Market conditions caused similar changes in the rates of other deposit products compared to the applicable rate cap, although the timing of when such changes occurred varied from product to product. Due to the COVID–19 emergency and the resulting effect on the economy beginning in March 2020, deposit rates in general, including the national rate and the rates paid by the top rate payers dropped, so that less than well capitalized institutions may again easily compete with even the highest rates paid on the 12-month CD under the current national rate cap.

There are several reasons that the national rate cap remained fairly unchanged from mid-2015 to approximately February 2020. Primarily, interest rates were relatively low following the financial crisis that began in 2007. Towards the end of 2015, however, some banks began to increase rates paid on deposits as the Federal Reserve increased its federal funds rate targets. During this time, and up to the present day, the largest banks have been, on average, slower to raise their published interest rates on deposits. This has held down the simple average of rates offered across all insured banks

[82] 74 FR 26516, 26519 (2009).

[83] The average of the top ten rates paid for 12 month CDs is meant to illustrate a competitive offering rate for wholesale insured deposits and show the general direction of the movement of the market for deposit rates.

and branches. Additionally, institutions, including the largest banks, had been offering more deposit products with special features, such as rewards checking, higher rates on odd-term maturities, negotiated rates, and cash bonuses, that are not included in the calculation of the published national rate.

Because of these developments, the majority of the institutions subject to the interest rate caps sought determinations from the FDIC to use the local rate for deposits obtained locally as the prevailing rate during the period when the national rate cap remained relatively unchanged. The national rate cap, however, remained applicable to deposits that these institutions obtained from outside their respective normal market area, including through the internet.

Setting the national rate cap at too low of a level could prohibit less than well capitalized banks from competing for deposits and create an unintentional liquidity strain on those banks competing in national markets. For example, a national rate cap that is too low could destabilize a less than well capitalized bank that gathers deposits outside its local market area just as it is working on improving its financial condition. Preventing such institutions from being competitive for deposits, when they are most in need of predictable liquidity, can create severe funding problems. Additionally, a rate cap that is too low may be inconsistent with the statutory requirement that an insured depository institution is only prohibited from offering a rate that ''significantly exceeds'' or is ''significantly higher'' than the prevailing rate. This could unnecessarily harm the institution, especially when liquidity planning is essential for safety and soundness.

E. Advance Notice of Proposed Rulemaking and Notice of Proposed Rulemaking

On September 4, 2019, the FDIC published in the **Federal Register** a notice of proposed rulemaking (''Interest Rate NPR''),[84] that proposed to amend the national rate, the national rate cap, the local market area, and the local market rate cap, as described below.[85]

1. National Rate

To address concerns raised in response to the ANPR about the current calculation of the ''national rate,'' from which the current national rate cap is derived, the FDIC proposed to replace the current ''national rate'' definition, which is based on the simple average of rates paid by all insured depository institutions and branches, with a definition based on a weighted average of rates paid by all insured depository institutions on a given deposit product, where the weights are institutions' respective market share of domestic deposits. This change to the calculation of the ''national rate'' was intended to address comments received in response to the ANPR that expressed concern that the current national rate definition resulted in a national rate cap that is too low because the largest banks with the most branches have a disproportional effect on the national rate, and that the branch-based methodology minimized the significance of online-focused banks, which have few or no branches but tend to pay the highest rates.

2. National Rate Cap

In the Interest Rate NPR, the FDIC proposed to replace the current national rate cap, *i.e.,* the national rate plus 75 basis points, with a proposed definition of ''national rate cap'' that is the higher of: (1) The rate offered at the 95th percentile of rates weighted by domestic deposit share; or (2) the national rate plus 75 basis points, with modifications to how the national rate is calculated, as described below.

The FDIC stated that it intended that the proposed two-prong national rate cap be effective across economic and interest rate cycles. During periods of low interest rates such as during the 2008 to 2015 period and the current, pandemic environment since March 2020, the second prong, *i.e.,* the national rate plus 75 basis points, would likely be the governing prong of the proposed national rate cap. During more normal interest rate environments, such as between 1992 and 2008, and between 2015 and early 2020, the other prong, the 95th percentile of rates, would likely be the national rate cap. The proposal was intended to provide a more balanced and dynamic national rate cap that would ensure that less than well capitalized institutions have the flexibility to access market-rate funding, yet prevent them from offering a rate that significantly exceeds the prevailing rate for a particular product, in accordance with Section 29.[86]

3. Local Rate Cap

Under the FDIC's the current regulation, there is a presumption that the prevailing rate or effective yield in the relevant market is the national rate unless the FDIC determines, in its sole discretion based on available evidence, that the effective yield in that market differs from the national rate. If a bank believes that the posted national rates are lower than the actual prevailing rates in the bank's normal market area(s), then the bank may request a high rate area determination from the FDIC. In determining whether the bank is in a high rate area, the FDIC could use segmented market rate information (for example, evidence by State, county or metropolitan statistical area).[87] If the FDIC agrees that the bank was in a high rate area,[88] the institution would be permitted to pay as much as 75 basis points above the local prevailing rate for deposits on those products solicited in its local market areas. For deposits received from outside its local market (including through the internet), the institution would have to offer rates that did not exceed the national rate cap. Also, the FDIC could allow evidence as to the rates offered by credit unions but only if the insured depository institution competed directly with the credit unions in the particular market.

In the Interest Rate NPR, the FDIC proposed to establish a local market rate cap that is 90 percent of the highest offered rate in the institution's local market area for a specific deposit product. Specifically, the proposal would allow less than well capitalized institutions to provide evidence that any bank or credit union with a physical presence in its local market area offers a rate on a particular deposit product in excess of the national rate cap. If sufficient evidence is provided, then the less than well capitalized institution would be allowed to offer an interest rate that is 90 percent of the highest offered rate in the local market area.

The Interest Rate NPR would eliminate the current two-step process where less than well capitalized institutions request a high rate

[84] 85 FR 7453 (Feb. 10, 2020).

[85] 84 FR 46470 (Sept. 4, 2019).

[86] In the proposal, the FDIC discussed other ways it had considered to set the national rate cap, including setting at: The higher of the current interest rate cap and the one that preceded it from 1992 to 2009, and the average of rates paid by the top payers. 84 FR 46470, 46476–46477. The FDIC also solicited comment on whether there were better options for setting a proxy for what it means to ''significantly exceed'' a prevailing market rate when rates converge. 84 FR 46470, 46492–46493.

[87] 12 CFR 337.6(f).

[88] The procedures for seeking such a determination are set forth in FIL–69–2009 (Dec. 4, 2009). As explained in the FIL, an insured depository institution can request a high rate determination for its market area(s) by sending a letter to the applicable FDIC regional office. After receiving the request, the FDIC would make a determination as to whether the bank's market area is a high-rate area. If the FDIC agreed that the bank was operating in a high-rate area, the bank would need to calculate and retain evidence of the prevailing rates for specific deposits in its local market area. The question and answer attachment was revised in November 1, 2011.

determination from the FDIC and, if approved, calculate the prevailing rate within local markets. Instead, a less than well capitalized institution would need to notify its appropriate FDIC regional office that it intends to offer a rate that is above the national rate cap and provide evidence that an insured depository institution or credit union in the local market area is offering a rate in its local market area in excess of the national rate cap for a comparable deposit product. As described above, the institution would then be allowed to offer 90 percent of the rate offered by the insured depository institution or credit union in the institution's local market area. The institution would be expected to calculate the local rate cap periodically, and, upon the FDIC's request, provide the documentation to the appropriate FDIC regional office and to examination staff during subsequent examinations.

F. Discussion of Comments

In response to the Interest Rate NPR, the FDIC received a total of 43 comments. Three of the comments were from national associations representing stakeholders in the banking industry; three were from state-level associations representing stakeholders in the banking industry in those states; one comment was from another trade association; one was from a state banking department, one comment was from a law firm on behalf of a bank, and 30 comments were from bankers or banks, including 12 similar emails from bankers. The details of these comments are discussed below.

1. Discussion of Public Comment on the National Rate

Several commenters raised concerns about the proposed methodology for calculating the national rate. For example, a national trade association for the banking industry and several bankers raised concerns regarding the use of a weighted approach. Some commenters wrote that they believed that the proposed methodology continued to give undue weight to the largest institutions with a traditional branch based model. One commenter indicated that it remained concerned about the continued use of weighting, whether it be by branch, market share, or size because they believe that weighting tends to misrepresent actual market share. Several commenters urged the FDIC to include rates paid by credit unions and internet banks, stating that including those rates would make for a more accurate national rate calculation. The commenters suggested that such rates are often higher and thus not including them would cause the national rate (and, ultimately, the national rate cap) to be too low, making it harder for banks, particularly community banks, to compete for or attract deposits.

A trade association recommended that credit union rates be included as part of the national rate calculation because credit unions compete on both a national and local scale with insured depository institutions.

2. Discussion of Public Comment on the National Rate Cap

Most commenters agreed that the current interest rate cap methodology needed to be revised and no commenter recommended that the current methodology remain unchanged. Several commenters raised general concerns about data quality and transparency, in particular with respect to the 95th percentile. One commenter questioned the quality of the underlying data used to calculate the rate. One commenter wrote that the data that is currently being collected and used by the FDIC to calculate the rate cap is not always an accurate representation of actual rates that many banks are willing to pay and are actively paying and that while the 95th percentile would be an improvement over the current methodology, it still does not produce a rate cap high enough to exceed prevailing rates in some economic cycles. Several argued that the national rate is not robust enough and should be based on publicly available, transparent data. One commenter stated that it is important to have a transparent and market-based national rate. Another argued that the 95th percentile would not be effective because it is not an accurate representation of actual rates that many banks are willing to pay and actively paying, and that if the FDIC used the 95th percentile it should add 75 basis points to that rate. One commenter stated that the 95th percentile still gives large banks too much influence over the calculation of the rate.

Several commenters recommended additional changes and requested that the proposed methodology be revised in the final rule. A trade association representing banks recommended that the FDIC adopt a rate cap that is the higher of the rate cap using the methodology in place between 1992 and 2009 (the Treasuries-based rate cap), and the rate cap using the methodology currently in place but modified so that it is 100 basis points above the average instead of 75 basis points and so that the average is calculated assigning each bank the same weight, with the additional change to include credit unions. Another trade association representing banks recommended that the FDIC set the national rate cap using a formula that it submitted, and implicit in that formula was the higher of the pre-2009 Treasuries-based rate and the current rate, with modifications.

A trade association recommended that the FDIC adopt a national rate cap of the higher of the current rate cap or the Treasuries-based rate cap in place from 1992 to 2009. A State banking commissioner recommended that the FDIC set the national rate cap at the higher of the following 4 measures: (1) The proposed national rate cap methodology; (2) the 1992–2009 methodology, *i.e.,* 120 percent or 130 percent of the comparable U.S. Treasury plus 75 basis points; (3) the average of the top 25 rates offered in the nation; and (4) the highest rate offered by a local institution for a particular deposit product. For renewals of time deposits, the State banking commissioner recommended that a bank be permitted to pay the rate currently paid to the customer for the same or lesser amount and for the same or lesser term.

Commenters generally recommended that the national rate cap be more transparent by basing it on publicly available market data such as Treasury and federal funds rates.

A banker recommended that the FDIC make a list of the highest rates offered to consumers for comparable products, select a certain number of the highest rates, *e.g.*, 25 and average those 25 highest rates. To accommodate the statutory language, the banker suggested that the average be the national rate and the FDIC allow 110 percent of that average as the level that does not significantly exceed the national rate.

For nonmaturity deposits, one commenter suggested that the national rate cap be based on the federal funds rate, 1-month Treasuries rate, FHLB overnight funds rate, or rates offered by listing services. Another banker suggested using the 3-month Treasuries rate or the federal funds rate, plus 75 basis points. Still another commenter suggested that nonmaturity products should use either the pre-2009 methodology or the rates on 1-year Treasuries.

3. Discussion of Public Comment on Local Rate Cap

The FDIC received several comments regarding the local rate cap proposal. One national trade association representing banks, as well as a state trade association, recommended that the FDIC use 125 percent, instead of the proposed 90 percent, of a competing interest rate as the upper limit, which it

claimed would allow a less than well capitalized bank to offer competitive rates on deposits while not going so far above normal market rates as to exacerbate potential safety and soundness issues. Another national association representing stakeholders in the banking industry recommended that a less than well capitalized institution be permitted to offer at least up to 95 percent of the competing institution's rate on a particular product in order to allow additional flexibility.

A state-level banking association recommended that internet rates and listing service rates be considered when deciding the local rates with which an institution competes. A banker stated that the proposal is better than the current method of calculating local rates, but suggested that the calculation include internet rates.

Commenters from more rural areas drew a distinction between funding operations in rural areas versus funding operations in more urban settings. One commenter wrote that banks in rural areas may not have access to sufficient local deposits and need to be able to attract deposits through other mechanisms, such as online. One commenter suggested that caps should relate to a bank's funding method, as there are often different rates offered at branches, on-line at the same branch, and at a branchless bank. A single rate may result in a cap that is too high for banks with many branches and too low for branchless banks.

4. Discussion of Other Comments

One national trade association commended the FDIC for revising its Risk Management Supervision Manual of Examination Policies to clarify that national rate caps apply only to institutions that are less than well capitalized. Despite this recent clarification to the Manual, several bankers urged the FDIC to make clear to its examiners that the national rate cap may not be used to evaluate well capitalized banks and should not be used as a proxy to evaluate financial products of well capitalized banks.

One banker reiterated a comment he made in response to the ANPR that the interest rate restrictions should not apply to a bank that has capital ratios that satisfy the well capitalized category but is deemed adequately capitalized because it is subject to a consent agreement that includes a capital maintenance provision. The commenter indicated that applying the interest rate restrictions to such an institution serves as a strong disincentive to investors injecting additional new capital into an institution experiencing difficulties because there is no guarantee the FDIC will not impose onerous rate restrictions regardless of the amount of capital invested.

G. The Final Rule

As described in further detail below, the final rule amends the FDIC's methodology for calculating the national rate, the national rate cap, and the local rate cap. The final rule also provides a new simplified process for institutions that seek to offer a competitive rate when the prevailing rate in an institution's local market area rate exceeds the national rate cap.

1. National Rate

The FDIC is adopting the national rate methodology generally as proposed, but revised to include the rates offered by credit unions. After considering the comments that indicated that credit unions compete with banks on a national scale, the FDIC is finalizing the proposed national rate definition, replacing the interest rate average weighted by branches with an average where each institution's interest rate is weighted by its share of deposits, with the addition of credit union rates. As described in the Interest Rate NPR, calculating the national rate by market share, rather than branch count, more accurately reflects the marketplace, and provides more emphasis on institutions with large or exclusive internet presence as described by commenters. However, the FDIC has not been able to find sufficient reliable, robust data to include in its national rate calculation the interest rates on deposit products with special features, such as rewards checking, off-tenor maturities, negotiated rates, cash bonuses, and non-cash rewards.

2. National Rate Cap

In this final rule, the FDIC is adopting the proposed national rate cap with a modification in response to comments. This formulation retains one prong of the national rate cap that was proposed, *i.e.,* the national rate, weighted by deposits (and now including credit unions as described above), plus 75 basis points, which will likely be the higher of the rates produced by the two proposed prongs in low interest rate environments such as the period between 2008 and 2015 and in the current period since March 2020.

However, the FDIC has replaced the other proposed prong, the rate offered at the 95th percentile of rates weighted by domestic deposit share, which would likely be the higher of the rates produced by the two prongs during more normal market conditions. For this prong, the final rule substitutes a rate that is 120 percent of the current yield on similar maturity U.S. Treasury obligations, plus 75 basis points. For nonmaturity deposits, the second prong will be the federal funds rate of interest, plus 75 basis points. This method is consistent with the alternative that was set forth in the proposal.

Thus, the national rate cap being adopted is the higher of: (1) The national rate, as revised to be based on weighting by deposits rather than branches (and including credit unions), plus 75 basis points; or (2) 120 percent of the current yield on similar maturity U.S. Treasury obligations, plus 75 basis points. The Treasury-based second prong also provides that, for nonmaturity deposits, the prong would be the federal funds rate, plus 75 basis points.

The FDIC is replacing the proposed 95th percentile prong with a cap based on Treasury yields or federal funds, because, and as noted in the Interest Rate NPR, there are certain data limitations with the proposed methodology. Specifically, the data gathered from third party sources is based upon information provided directly by institutions or made available via public sources. As such, some rates being offered for certain products are left unreported or unpublished and therefore may not be captured as part of the data set used to determine the proposed 95th percentile prong.

These limitations are more apparent today than when the FDIC adopted its 2009 regulations that first pegged the national rate calculation to a methodology based upon deposit rates. This is because the 2009 methodology was implemented during a recessionary period, and more recently, a significant number of insured depository institutions offer products with less standard features that often times are either negotiated or not readily provided to third party sources.

As part of this rulemaking process, and in response to commenter concerns about the data limitations, the FDIC reviewed additional data sources to determine whether these data sets could provide a more reliable reflection of the deposit rate market. While some data is available for a certain number of less traditional deposit products, it is difficult to accurately calculate an annual percentage yield (APY) for certain products without more granular data. For example, deposit products that pay rates based upon certain balance thresholds, or the number of transactions made within a specific time period, would require the calculation of

APYs based upon granular data (at the individual depositor level) that is unavailable, or to make general assumptions that would likely result in less reliable APY calculations.

Nonetheless, based on historical data samples the FDIC evaluated, it appears that including the non-traditional deposit products that have a calculable APY in the proposed 95th percentile methodology would generally result in a relatively small increase in applicable rate caps. However, these data samples and analysis had limitations, and the observations may not be robust across all banks and all markets; as a result, the FDIC plans to further explore these issues in the future rather than adopt this methodology as proposed.

As noted above, the final rule retains the first proposed prong for the national rate cap (national rate +75 basis points). The FDIC is retaining this prong, as proposed, notwithstanding the data limitations described above, because (1) based upon review of the historical information, the first prong will be substantially similar to the branch-based methodology that the FDIC has used for over a decade, (2) the 75 basis point buffer ameliorates, though does not eliminate, some of the potential data concerns,[89] and (3) including a second prong not based on deposit data ensures the FDIC is not fully relying on deposit data in calculating the national rate cap.[90] The FDIC will continue to explore ways and additional data sources to improve the national rate calculation and will continue to consider pegging the national rate cap entirely to deposit rates in the future.

Nevertheless, the FDIC acknowledges that replacing the proposed 95th percentile prong with a cap based on Treasury rates or federal funds rates addresses concerns raised by commenters about the transparency of the underlying data that the FDIC uses to calculate the national rate, as well as the perceived difficulty in replicating the methodology. Further, a national rate cap applicable during normal market conditions based on the 95th percentile of rates is vulnerable to an institution, or a few institutions, with a large deposit share affecting the 95th percentile by withdrawing or introducing a product into the market or initiating a significant rate change. While such fluctuations, caused by factors other than data limitations, would be reflective of changes in the market, these changes could cause volatility in the national rate cap.

As another reason for using a Treasuries-based rate as one of the rate cap prongs, the FDIC notes that it had previously determined that the Treasuries-based rates plus 75 basis points represented a reasonable threshold above which rates ''significantly exceeded'' or were ''significantly higher'' than the national rate. This determination was relatively effective for the 16 years between 1992 and 2008 and was only changed in 2009 to the current national rate cap formula because, in part, Treasury-based rates fell significantly below deposit rate averages in the low interest rate environment associated with the financial crisis at that time. It is apparent that neither the current methodology nor the Treasuries-based rate works in all interest rate environments, the methodology adopted by the final rule is expected to be durable under both high-rate or rising-rate environments and low-rate or falling-rate environments.

Additionally, the FDIC will change from publishing the national rates and national rate caps weekly, to publishing such data monthly to limit the need for institutions to continually check the national rates. However, the FDIC may in certain circumstances publish the national rates and national rate caps more or less frequently, such as during a time of unusual rate volatility.

With respect to nonmaturity deposits, there is no Treasury security of comparable duration. In the Interest Rate NPR, the FDIC asked if the overnight federal funds rate should be used for nonmaturity deposits instead of U.S. Treasury securities products. Several commenters recommended that the FDIC use the federal funds rate.[91]

In the final rule, for nonmaturity products, in lieu of the Treasury-based calculation, the second prong of the national rate cap is the federal funds rate plus 75 basis points. The FDIC notes that, historically, the rate for the three-month Treasury security has tracked closely the federal funds rate. The FDIC has selected the federal funds rate as the reference point for nonmaturity deposits under the second prong because, as an overnight deposit, Federal funds are conceptually closer to nonmaturity deposits.

The charts attached in Appendix 2 of this notice reflect historical data for the interest rates of insured depository institutions that would have resulted from the two prongs of the national rate cap being adopted. The charts also show the average of top rates offered for interest checking, savings, and money market demand accounts, as well as CDs for terms of 1-month, 3-months, 6-months, one-year, two-years, three-years, and five-years.

3. Local Market Rate Cap in the Final Rule

In the final rule, the FDIC is adopting the proposed local market rate cap of 90 percent of the highest offered rate in the institution's local market geographic area. Specifically, a less than well capitalized institution may provide evidence that any bank or credit union with a physical presence in its local market area offers a rate on a particular deposit product in excess of the national rate cap. The local market area may include the State, county or metropolitan statistical area, in which the insured depository institution accepts or solicits deposits. The less than well capitalized institution will be allowed to offer 90 percent of the competing institution's rate on the particular deposit product to customers located within the less than well capitalized institution's local market area.

The final rule also eliminates the current two-step process where less than well capitalized institutions request a high rate determination from the FDIC and, if approved, calculate the prevailing rate within local markets. Instead, a less than well capitalized institution must notify its appropriate FDIC regional office that it intends to offer a rate that is above the national rate cap and provide evidence that an insured depository institution or credit union with a physical presence in the less than well capitalized institution's normal market area is offering a rate on a particular deposit product in its local market area in excess of the national rate cap. The less than well capitalized institution would then be allowed to offer 90 percent of the rate offered by the competing institution in the institution's local market area to customers physically located within the institution's local market area. The institution would be expected to calculate the local rate cap monthly, maintain records of the rate calculations for at least the two most recent examination cycles and, upon the FDIC's request, provide the documentation to the appropriate FDIC

[89] As shown in the appendices, for the period of low interest rates during 2010 to 2015, and from March 2020 to the present, the 75 basis points added to the national rate did not restrict less than well capitalized institutions from competing for market-rate deposits when U.S. Treasury yields were near zero.

[90] As shown in the appendices, for the periods of 1992 and 2008 and 2015 to early 2020, during periods of more normal interest rate environments, the national rate cap based on Treasuries is more reactive to increases in deposit rates than the first prong.

[91] 84 FR 46470, 46480 and 46492.

regional office and to examination staff during any subsequent examinations.

The FDIC is declining to adopt recommendations by commenters that the local rate cap be higher than 90 percent of the highest local rate. Given the changes being made to the national rate cap described above, the FDIC expects the need for banks to resort to the local rate cap to be less frequent, and, in such cases, 90 percent of the highest local rate will provide a meaningful cap while allowing the institution to compete for funds in its local market. The FDIC is also not revising the proposed rule to include internet rates, because the FDIC believes that it would be inconsistent with the concept of a ''local'' rate to include institutions that do not have a physical location in the local market and internet rates, which are offered nationally, are reflected in the national rate.

4. Off-Tenor Maturity Products

If an institution seeks to offer a product with an off-tenor maturity for which the FDIC does not publish the national rate cap or that is not offered by another institution within its local market area, then the institution will be required to use the rate offered on the next lower on-tenor maturity for that product when determining its applicable national or local rate cap, respectively. For example, an institution seeking to offer a 26-month certificate of deposit, and no other local institution is offering a 26-month certificate of deposit, must use the rate offered for a 24-month certificate of deposit to determine the institution's applicable national or local rate cap.

On-tenor maturities are defined to include the following term periods: 1-month, 3-months, 6-months, 12-months, 24-months, 36-months, 48-months, and 60-months. All other term periods are considered off-tenor maturities. There is no off-tenor maturity for nonmaturity products such as interest checking accounts, savings accounts, or money market deposit account.

H. Alternatives

Below are alternatives, other than those described above, that were considered as part of this final rulemaking.

Average of the Top-Payers

Some commenters suggested that the FDIC use an average of the top rates paid as the national rate cap. As an example, the FDIC could set the national rate cap based upon the average of the top-25 rates offered (by product type). Under this approach, the FDIC would interpret that a less than well capitalized institution ''significantly exceeds the prevailing rate in its normal market area'' if it offers a rate that is above the average of the top rates offered in the country. This approach would be simple to administer and the FDIC would be able to provide real-time rate caps because it would no longer need to maintain and review the extensive data it receives from third party data providers to calculate averages.

The FDIC decided not to choose this approach due to the same data limitations as the proposed 95th percentile prong, as described in Part II. Additionally, the subset of banks paying the highest rate may have a small market share and have little to no influence over competitive rates paid in the market. Further, this same small subset of banks could be significant outliers from the rates offered by the market.

Incorporate Specials and Promotions Into the Current National Rate Calculation

Several commenters suggested that the FDIC change its methodology in calculating the current national rate and include additional inputs for the published rates, such as special negotiated rates or other monetary bonus offers. As discussed in Part II, the FDIC has not been able to find sufficient reliable, robust data to include in its national rate calculation the interest rates on deposit products with special features, such as rewards checking, off-tenor maturities, negotiated rates, cash bonuses, and non-cash rewards. However, as noted, the FDIC will continue to explore ways and additional data sources to improve the national rate calculation in the future.

One Vote per Institution

Commenters also recommended that published rates be limited to the highest rate offered by each depository institution rather than incorporating rates paid at all branches. According to commenters, this would prevent a skewing effect on the national rate by the largest institutions with the most branches. In considering this alternative, the FDIC analyzed the impact of this change by comparing the yield curves for the 12-month CD, the current national rate cap (using all branches) and the national rate cap using the highest rate offered by each IDI (in other words, each institutions receives ''one vote'').[92] The differences in rates range from 15 to 52 basis points, with a range of 25 basis points between 2012 through 2017.

The FDIC did not choose this alternative because, in the FDIC's view, the one-bank, one vote approach would result in a national rate that would not be as reflective of market rates currently being offered as weighting by market share. The FDIC believes that institutions with more deposits have a greater impact on competition and the market rates.

Federal Home Loan Bank Borrowing Rate

Many commenters suggested that the FDIC amend the current national rate calculation and use the Federal Home Loan Bank (FLHB) borrowing rate for each maturity. The FDIC chose not to propose the FHLB borrowing rate for several reasons. The FHLB borrowing rate is not based upon rates offered by institutions,[93] but is instead based upon the cost of funds for FHLB member institutions and requires that FHLBs obtain and maintain collateral from their members to secure the advance. Collateral requirements and borrowing interest rates may also vary based on an insured depository institution's financial condition. Moreover, FHLB advances, unlike deposit products, are not insured and not guaranteed by the U.S. government. In addition, there are 11 different FHLB districts, all that establish their own rates that may vary between districts. For these reasons, the FDIC does not believe that the FHLB borrowing rate would be a reliable indicator of rates offered on deposits by insured depository institutions.

I. Expected Effects

The interest rate restrictions apply to an insured depository institution that is less than well capitalized under PCA's capital regime. An institution may be less than well capitalized either because: (1) Its capital ratios fall below those set by the federal banking agencies for an institution to be deemed well capitalized; or (2) it otherwise meets the capital requirements for the well capitalized category, but is subject to a written agreement, order, capital directive, or prompt corrective action directive issued by its primary regulator that requires the institution to meet and maintain a specific capital level for any capital measure.[94]

[92] 84 FR 46470, 46481 (Sept. 4, 2019).

[93] Section 29 of the FDI Act restricts less than well capitalized institutions from offering a rate of interest that is significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions. 12 U.S.C. 1831f(g)(3).

[94] FDIC—12 CFR 324.403(b)(1)(v); Board of Governors of the Federal Reserve System—12 CFR

As noted above, as of June 30, 2020, 10 FDIC-insured institutions had capital ratios that put them in a PCA category lower than well capitalized.[95] The FDIC reviewed the deposit interest rates offered for 11 products during the month of September 2020 by nine of these institutions for which data were available. None of the nine less than well capitalized institutions offered interest rates above the current or the final rule's national rate caps for any product reviewed.[96]

The definition of local and national rate cap established by the final rule is likely to benefit FDIC-insured institutions. The FDIC believes that the definition of national rate cap adopted by the final rule is more sensitive to a range of interest rate environments. The final rule establishes a more transparent methodology for calculating the national rate cap which should benefit FDIC-insured institutions by facilitating ease of compliance and simplifying their liquidity planning.

The greater sensitivity of the national rate cap in this final rule to prevailing interest rates would likely reduce the potential for severe liquidity problems or liquidity failures at viable banks to arise solely as a result of the operation of the cap. The FDIC believes this aspect of the rule is important, although difficult to quantify given uncertainties about both the future interest rate environment and the future condition of banks. On the other hand, to the extent rate caps are less restrictive, the leeway for some less than well capitalized institution to continue to fund imprudent operations could increase. In this regard, the FDIC believes the final rule continues to comport with the statutory purpose of preventing less than well capitalized institutions from soliciting deposits at interest rates that significantly exceed prevailing deposit interest rates.

The final rule could benefit depositors by enabling them to earn higher rates of return on their deposits. It is difficult to estimate this expected effect because the effect would depend on the future economic and financial conditions, and the rates of return of competing products, among other things.

Finally, the final rule could pose some modest regulatory costs for FDIC-insured institutions associated with making the necessary changes to policies, procedures and internal systems in order to achieve compliance with the final rule.

III. Treatment of Nonmaturity Deposits for Purposes of the Brokered Deposits and Interest Rate Restrictions

A. Background

Section 29 provides that an ''insured depository institution that is not well capitalized may not *accept* funds obtained, directly or indirectly, by or through any deposit broker for deposit into 1 or more deposit accounts'' (emphasis added).[97]

Section 29 also contains two interest rate restrictions, one based on when funds are accepted by an institution, the other on when an institution solicits deposits. One restriction provides that an adequately capitalized institution accepting brokered deposits pursuant to a waiver granted under Section 29(c) of the FDI Act or reciprocal deposits may not pay a rate of interest that, at the time the funds are *accepted,* significantly exceeds the prevailing rate.[98] The other interest rate restriction prohibits a less than well capitalized institution from *soliciting* any deposits by offering a rate of interest that is significantly higher than the prevailing rate.[99]

For CDs and other maturity deposits, the timing of when funds for such deposits are accepted is straightforward, and Section 29 directs that such funds are accepted when the maturity deposit is renewed or rolled over.[100] For deposits credited to a nonmaturity account, however, Section 29 does not provide express direction or guidance on when such a deposit is *accepted* or *solicited.* Applying these concepts of solicitation and acceptance to nonmaturity deposits is more relevant today than at the time that the law was enacted, in 1989. At that time, brokered deposits were almost exclusively maturity deposits. However, since 1989, nonmaturity brokered deposits have become more commonplace.

In recent years, there has been some confusion regarding the FDIC's application of section 29 to nonmaturity deposits. The FDIC is adopting an interpretation in a clear, transparent way, through notice and comment rulemaking, to address such confusion.

B. Proposed Rulemakings

Accordingly, through this rulemaking process, the FDIC considered approaches for when nonmaturity deposits held by less than well capitalized institutions are subject to the interest rate and brokered deposits restrictions.

In the Interest Rate NPR, the FDIC indicated that it was considering an interpretation under which nonmaturity deposits would be viewed as ''accepted'' and ''solicited'' for purposes of the interest rate restrictions at the time any new nonmaturity funds are placed at an institution.

Under the proposed interpretation, balances in an existing money market demand account or other savings account, as well as transaction accounts, at the time an institution fell below well capitalized would not be subject to the interest rate restrictions unless or until new funds were deposited into those accounts. If funds were deposited to such an account after the institution became less than well capitalized, the entire balance of the account would be subject to the interest rate restrictions. Interest rate restrictions would apply to any new nonmaturity deposit accounts opened after the institution fell below well capitalized.

In the Brokered Deposits NPR, the FDIC considered a similar approach for brokered deposits as it did for interest rate restrictions. For brokered nonmaturity deposits, the FDIC considered an interpretation under which nonmaturity brokered deposits are viewed as ''accepted'' for the brokered deposits restrictions at the time any new nonmaturity funds are placed at an institution by or through a deposit broker.

Under this proposed interpretation, brokered balances in a money market demand account or other savings account, as well as transaction accounts, at the time an institution falls below well capitalized, would not be subject to the brokered deposits restrictions. However, if brokered funds were deposited into such an account after the institution became less than well capitalized, the entire balance of the account would be subject to the brokered deposits restrictions. If, however, the same customer deposited brokered funds into a new account and the balance in that account was subject

208.43(b)(1)(v); Office of the Comptroller of the Currency—12 CFR 6.4(c)(1)(v).

[95] The 10 institutions do not include any quantitatively well capitalized institutions that may have been administratively classified as less than well capitalized.

[96] Some institutions offered fewer than 11 products.

[97] 12 U.S.C. 1831f(a).

[98] 12 U.S.C. 1831f(c).

[99] 12 U.S.C. 1831f(g)(3) and (h). The restriction in section 1831f(g)(3) operates to deem any less than well capitalized institution a deposit broker and such deposits brokered deposits, if the institution solicits deposits by offering a rate of interest significantly higher than the prevailing rate. As a deposit broker, such an institution may only accept such deposits if it is adequately capitalized and has received a waiver under section 1831f(c). If below adequately capitalized, pursuant to section 1831f(g)(3), the institution would be prohibited from accepting such funds because a deposit broker may not accept brokered deposits and cannot not obtain a waiver to do so. Section 1831(h) results in the same prohibition for undercapitalized institutions.

[100] 12 U.S.C. 1831f(b).

to the brokered deposits restrictions, the balance in the initial account would continue to not be subject to the brokered deposits restrictions so long as no additional funds were accepted. The restrictions would also generally apply to any new nonmaturity brokered deposit accounts opened after the institution falls to below well capitalized.

C. Comments

The FDIC did not receive comments in response to the proposed interpretation provided in the Brokered Deposits NPR. However, the FDIC received a number of comments in response to proposed interpretation provided in the Interest Rate NPR, which are summarized below.

Interest Rate NPR. A national association that represents banks urged the FDIC not to finalize its proposed interpretation regarding nonmaturity deposits. The association wrote that such an interpretation would be operationally unworkable and would require banks to maintain parallel products and systems to be able to track accounts and multiple rates in the event the bank becomes less than well capitalized. The association also noted that forcing a customer's rate down, should he or she deposit an additional amount in the account would hurt consumers and likely cause a liquidity stress as customers move their balances elsewhere. Instead, the association recommended that once an institution falls below well capitalized, the FDIC should exempt or grandfather all existing deposit accounts from the rate restrictions, restricting only new deposits to new accounts opened with the bank. Similarly, another commenter suggested that existing nonmaturity accounts should be exempt from rate caps, even when new funds are added.

A stakeholder in the banking industry pointed out that some banks can and do pay interest at different rates on different parts of a depositor's balance, so called ''tiered interest.'' The commenter indicated that there is no apparent reason why a bank could not tier interest in a way that would apply an unrestricted rate to the part of the balance that consists of deposits received before the bank became not well capitalized and apply a restricted rate only to new deposits in the account. The commenter indicated that the restricted interest rate could be applied on a last-in, first-out basis.

D. Final Rule

In the final rule, the FDIC is adopting a new interpretation for the solicitation and acceptance of nonmaturity deposits. In adopting the interpretation described below, the FDIC is relying on the plain meaning of the terms ''solicit'' and ''accept'' in a way that it is intended to be operationally workable for institutions and the FDIC. The FDIC appreciates the operational difficulties described by commenters that institutions may have faced under the proposed interpretation, and has tried to address such difficulties in the final rule while remaining within the parameters of the statutory text.

1. Solicitation of Funds by Offering Rates of Interest

Section 29 prohibits a less than well capitalized institution from soliciting deposits by offering a rate of interest that is significantly higher than the prevailing rate. Generally, under the interpretation adopted by this final rule, an institution has *solicited* a deposit when a new account is opened or when the institution increases the rate of interest on an existing account. If a depositor adds funds to, or withdraws funds from, an existing nonmaturity account, or leaves funds in an existing nonmaturity account, no solicitation by the institution has occurred.

More specifically, for a nonmaturity account opened after the institution has fallen below well capitalized, under the final rule, an institution has solicited the deposit when the account is opened. For a nonmaturity account opened prior to an institution's PCA status falling below well capitalized, funds already credited to the account at that time have not been solicited by the institution. In addition, an institution will not be considered to have solicited deposits when new funds are added to a nonmaturity account that was opened before the institution fell below well capitalized, unless it has changed the interest rate on the account.

For a nonmaturity account held by a party as agent or nominee of one or more persons, funds are solicited each time the funds of a new beneficial owner are added to, for example, the omnibus account. As a result, a less than well capitalized institution is restricted from soliciting funds of a new beneficial owner at a rate that exceeds its applicable rate caps.

2. Acceptance of Brokered Deposits

Section 29 prohibits a less than well capitalized institution from accepting funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts.

As noted above, for deposits that have a maturity, application of section 29 is straightforward. Funds have been accepted whenever a new account is opened, or when funds are renewed or rolled over.

The treatment of nonmaturity deposits is less straightforward. Under this final rule, the FDIC is adopting an interpretation for when a nonmaturity brokered deposit is considered accepted and therefore subject to the brokered deposits restrictions. Generally, the FDIC finds that funds are accepted whenever (1) a depositor adds funds to a newly opened nonmaturity account (or, similarly, when funds for a new underlying depositor are credited to an omnibus account in the case of an agent or nominee) or (2) for existing nonmaturity accounts, when the aggregate amount of nonmaturity funds accepted by or through a particular deposit broker increases. More specifically, the FDIC is interpreting that for nonmaturity brokered deposits opened prior to an institution's PCA status falling below well capitalized, funds that were already credited to the nonmaturity accounts at that time, by a particular deposit broker, would not be treated as being accepted. Nonmaturity brokered deposits would be considered accepted in instances when, after an institution becomes less than well capitalized:

- a nonmaturity brokered account is opened;
- the amount of nonmaturity brokered deposits, by or through a particular deposit broker, increases above the balance of nonmaturity brokered deposits existing at the bank, with respect to that particular deposit broker, at the time of downgrade to less than well capitalized; or
- for agent or nominee accounts, new funds of a new beneficial owner are added to the account.

Under this interpretation, if an adequately capitalized bank, for example, retained $10 million in nonmaturity brokered deposits from a particular deposit broker prior to the PCA downgrade, then it can continue to receive funds in and out of the nonmaturity brokered accounts maintained by that deposit broker, without seeking a waiver, as long as: The total amount of nonmaturity brokered deposits from that deposit broker does not increase above $10 million, a new nonmaturity account is not opened, or (for agent or nominee accounts) new funds of a new beneficial owner are not added to the account. In order for the aggregate amount of nonmaturity funds from that particular deposit broker to increase above $10 million, or in order for a new depositor to place funds into a nonmaturity

account, the institution would need a waiver from the FDIC.

3. Acceptance of Brokered Deposits Subject to a Waiver Into a Nonmaturity Account

As noted above, for the purposes of Section 29's interest rate restrictions, in addition to the restrictions on *soliciting* deposits by offering a rate of interest that is significantly higher than the prevailing rate, an adequately capitalized institution is also subject to interest rate restrictions when it *accepts* nonmaturity brokered deposits subject to a waiver.

As a result, nonmaturity brokered deposits that are accepted pursuant to a waiver, as described above, would be subject to the applicable rate cap. To take the example above, the institution, upon falling below well capitalized status, would not be restricted by section 29 from paying any rate of interest on nonmaturity funds from that particular deposit broker to existing depositors, so long as the aggregate funds remained below $10 million. The institution could receive a waiver to allow the aggregate funds from that deposit broker for that group of existing depositors to exceed $10 million; however, the institution would not be permitted to pay a rate of interest in excess of the rate cap on more than $10 million in funds. In the event the institution receives such a waiver, the rule does not distinguish *which* funds have been accepted pursuant to the waiver, due to the fungibility of funds and the operational challenges in imposing such a regime, and instead restricts the total amount of funds upon which the institution can pay a rate in excess of the applicable rate cap. The rate cap restrictions would also apply to any new accounts opened by or through the deposit broker after the institution fell below well capitalized.

More specifically, for a nonmaturity account opened prior to an institution's PCA status falling below well capitalized, with respect to a particular deposit broker, brokered funds that were already credited to the nonmaturity account at that time would not be treated as being accepted for purposes of the interest rate restrictions. Funds added to the account after the institution falls below well capitalized, with respect to a particular deposit broker, would be subject to the interest rate restriction to the extent they exceeded the balance of nonmaturity brokered deposits existing at the bank, with respect to that particular deposit broker, at the time of downgrade to less than well capitalized, if the institution has received a waiver to accept brokered deposits. In addition, with respect to a particular deposit broker, for a nonmaturity account opened after an institution has fallen below well capitalized, the brokered funds will be treated as accepted when the nonmaturity account is opened. For a nonmaturity account held by a party as agent or nominee of one or more persons, with respect to a particular deposit broker, funds are accepted each time funds of a new depositor are added to the omnibus account.

4. Summary of Treatment of Nonmaturity Deposits

To summarize, if a bank falls below well capitalized, under this final rule:

- The bank may not open a new nonmaturity account that pays an interest rate above the applicable rate cap, nor may it add funds on behalf of a new depositor to an existing nonmaturity account that pays an interest rate above the applicable rate cap;
- the bank may continue to pay an interest rate above the applicable rate cap on a nonmaturity account opened prior to the bank falling below well capitalized, but may not increase the rate, and a depositor may add funds to and withdraw funds from such account;
- without a waiver, a bank may not open a new nonmaturity account by or through a deposit broker, nor may funds on behalf of a new underlying depositor be added to an existing omnibus account in the case of an account of an agent or nominee that is a deposit broker;
- without a waiver, the aggregate amount of nonmaturity funds that the bank receives by or through a deposit broker may not exceed the aggregate amount of nonmaturity funds retained from that deposit broker at the time the bank fell below well capitalized, (meaning that existing depositors may add funds to or withdraw funds from their nonmaturity accounts so long as the aggregate amount does not exceed the aggregate amount at the time the bank fell below well capitalized);
- with a waiver, the aggregate nonmaturity funds received by or through a deposit broker may increase above the aggregate amount at the time the bank fell below well capitalized, subject to the terms of the waiver; and
- with or without a waiver, the amount of nonmaturity funds from a particular deposit broker on which the bank may pay a rate of interest in excess of the applicable rate cap may not exceed the aggregate amount of nonmaturity funds retained from that deposit broker at the time the bank fell below well capitalized.

Appendix 1

PUBLICLY-AVAILABLE ADVISORY OPINIONS

AO No.	AO title
02–2	*02–2 Applicability of FDIC Regulations Regarding Brokered Deposits to Credit Unions Servicers That Purchase Certificates of Deposit from FDIC Insured Banks.*
02–4	*02–4 Opinion Regarding Whether ''Listing Services'' Would Be Considered Deposit Brokers.*
04–03	*04–03 Questions Concerning Capital Market CD Program.*
04–04	*04–04 Question Regarding FDIC's Criteria for Determining When a ''Listing Service'' is a Deposit Broker.*
04–05	*04–05 Questions Regarding Deposit Insurance Coverage of the interest and CD When Interest is Based on the Consumer Price Index.*
05–02	*05–02 Are Funds Held in ''Cash Management Accounts'' Viewed as Brokered Deposits by the FDIC?*
00–6	*00–6 Whether Brokered CDs Purchased at Different Institutions Will be Separately Insured After a Merger of Those Institutions.*
13–01	*13–01 Question Concerning a Deposit Program.*
15–01	*15–01 Question regarding whether Financial Firms that Refer Clients to a Bank Qualify as Deposit Brokers.*
15–02	*15–02 Question regarding whether a Company that Designs Deposit Products is Considered a Deposit Broker–Part I.*
15–03	*15–03 Question regarding whether a Company that Designs Deposit Products is Considered a Deposit Broker–Part II.*
15–04	*15–04 Question regarding whether business professionals qualify as deposit brokers when referring clients to a bank.*
16–01	*16–01 Question regarding whether certain Deposits held for Clearing Purposes at an Affiliated Bank are Brokered Deposits.*
17–01	*17–01 Question regarding whether deposits placed through a Bank Program to allocate Charitable Donations to local Community Organizations would be Considered Brokered Deposits.*

PUBLICLY-AVAILABLE ADVISORY OPINIONS—Continued

AO No.	AO title
17–02	*17–02 Question regarding whether certain Deposits placed through a Bank's relationship with certain "Middle Market Companies" are considered Brokered Deposits.*
88–7	*88–7 Insurance Coverage of CDs Invested Through Deposit Broker.*
89–51	*89–51 Brokered Deposits Prohibition of Section 29 of the FDI Act Under FIRREA.*
89–55	*89–55 Does Acceptance of Brokered Deposits in Violation of Section 29 of the FDI Act Affect the Insurance of the Deposits So Received.*
90–11	*Brokered Deposits: Master CD's Purchased From Financial Institutions and Held by a Custodian Bank for the Benefit of the Purchasers.*
90–2	*Deposit Insurance for Brokered Deposits.*
90–24	*90–24 Deposit Broker Engaged in the Business of Placing Deposits, or Facilitating the Placement of Deposits.*
90–40	*Domestic Brokered Deposits of Foreign Bank Customer Funds: Recordkeeping Requirements.*
92–50	*92–50 Criteria for Determining Whether a Listing Is a "Deposit Broker" for Purposes of 12 U.S.C. § 1831f and 12 C.F.R. § 337.6.*
92–51	*Extent to Which Trust Department of Bank Is Subject to Registration Requirements Imposed by New Brokered Deposit Prohibitions.*
92–52	*Company and Its Employees Offering Investment Advisory Services and Purchasing CDs in Clients' Names Are Deposit Brokers Subject to Registration Requirements of New Brokered Deposit Prohibitions.*
92–53	*92–53 Company Which Never Has Actual Possession of Investor's Principal But Facilitates Placement of Deposits Is a Deposit Broker.*
92–54	*92–54 Company Which Merely Collects Information on Availability and Terms of Deposit Accounts and Publishes Such Data Is not a Deposit Broker.*
92–56	*92–56 Bank Employee Who Sells Commercial Checking Accounts and Is Paid Solely by Commission Must Register as a Deposit Broker.*
92–60	*92–60 Where Company and Its Clients Are Deposit Brokers, Company May File Master Notice Registering as Deposit Broker on Behalf of Clients.*
92–66	*92–66 Investment Advisor/Fund Administrator for Governmental Authorities Is Deposit Broker with Respect to Optional Certificate of Deposit Placement Program It Offers.*
92–68	*92–68 Bank Acts as Deposit Broker When It Places Portion of Deposits Exceeding Insurance Limit with Affiliated Depository Institutions.*
92–69	*92–69 Renewal or Rollover of Deposit Is Prohibited by 12 U.S.C. § 1831f(a) only if Deposit Broker Continues to be Involved in Transaction; Brokered Deposits Accepted at Rates Significantly Higher than Prevailing Rate but Renewed for Less Does not Constitute Prohibited Renewal.*
92–71	*92–71 Bank Acts as Deposit Broker When, at Request of Customer, It Purchases CDs at Other Depository Institutions and Charges Fee for Such Service.*
92–73	*92–73 Mere Knowledge on Part of Insured Depository Institution That It Is Accepting Funds from Broker Is Sufficient to Subject Institution to Brokered Deposit Restrictions Based on Its Capital Category.*
92–75	*92–75 Brokered Deposits: Employee Compensation May Not Be Adjusted After the Fact to Ensure That Compensation is Primarily Salary.*
92–77	*92–77 Investment Advisor/Broker-Dealer which Establishes System for Marketing Deposits and Receives Consideration Through Receipt of Deposits or Fees by Bank which it Partially Owns Must Register as Deposit Broker.*
92–78	*92–78 FHA Trustees Servicing FHA-Related Mortgage Portfolios Are Not Subject to Brokered Deposit Registration Requirements.*
92–79	*92–79 Associations With Which Insured Institution Has Entered Into Marketing Agreements are Subject to Brokered Deposit Registration Requirements.*
92–84	*92–84 Company that Assist and Advises Mortgage Loan Servicer in Placing Funds Must Register as Deposit Broker.*
92–86	*92–86 Company That Assists Municipalities, Private Investors and Corporations in Locating Depository Institutions Actively Seeking Large Deposits but That Does not Accept Direct Fee from Institution Must Register as a Deposit Broker.*
92–87	*92–87 Agreement Entered into Between Trust Department and Customer for Primary Purpose of Placing Funds With Insured Depository Institutions Requires Bank to Register as Deposit Broker.*
92–88	*92–88 Bankers' Bank Acts as Deposit Broker When It Places Deposits for Its Stockholder Banks and Other Depository Institutions.*
92–91	*92–91 Administrator of State School Cash Management Program Which Places CDs Must Register as Deposit Broker.*
92–92	*92–92 Bank Acts as Deposit Broker When It Places Excess Funds for Municipality Acting as Public Guardian/Administrator and for Other Customers.*
93–3	*93–3 Transaction in Which an Entity Finds Insured Depository Institutions for Trust Department Investments for a Fee or Commission Is Subject to Brokered Deposit Recordkeeping Requirements.*
93–4	*93–4 Deposits Used to Secure Loans to Foreign Customers Are Subject to Brokered Deposit Interest Rate Restrictions.*
93–5	*93–5 An Adequately Capitalized Depository Institution Without a Brokered Deposit Waiver May Not Offer Interest Rates Significantly Higher Than Prevailing Interest Rate Offered by Other Insured Depository Institutions With Same Type of Charter.*
93–6	*93–6 Brokered Deposits: Insured Depository Institutions Must Compare Their Interest Rates to Other Insured Depository Institutions With Same Type of Charter.*
93–13	*93–13 Funds Invested in Federally Insured Minority- or Women-Owned Depository Institutions by Fannie Mae Pursuant to an Irrevocable Trust Are Not Considered Brokered Deposits.*
93–14	*93–14 Bank Acts as Deposit Broker When It Occasionally Invests in CDs With Other Insured Depository Institutions on Behalf of Its Customers.*
93–16	*93–16 Well-Capitalized Institution That Solely Offers High-Rate Deposits Need Not Notify FDIC of Its Deposit Broker Status.*
93–18	*93–18 Clarification of Brokered Deposit Interest Restrictions Imposed by 12 U.S.C. 1831(f).*
93–19	*93–19 Circumstances Under Which an Adequately Capitalized Institution Operating Under Brokered Deposit Waiver May Use National Rate Instead of Normal Market Rate.*
93–21	*93–21 Legal Requirements Governing Advertisement of Deposits by Deposit Brokers.*
93–30	*93–30 Affinity Groups Are Not Deposit Brokers for Purposes of Sections 29 and 29A of the FDI Act and 12 CFR § 337.6(a).*

PUBLICLY-AVAILABLE ADVISORY OPINIONS—Continued

AO No.	AO title
93–31	*93–31 Whether Well-Capitalized Institution Offering Variable-Rate, College Cost-Linked CD and Agents Who Place CD Are Deposit Brokers.*
93–32	*93–32 Clarification of Brokered Deposit Interest Rate Restrictions.*
93–34	*93–34 Whether Corporate Sponsor Participating in Bank Tie-In Promotion Is a Deposit Broker.*
93–40	*93–40 Clarification of Brokered Deposit Interest Rate Restrictions.*
93–44	*93–44 Brokered Deposits: Further Guidance for Listing Services.*
93–46	*93–46 Brokered Deposits: Clarification of "Deposit Broker" Definition and Interest Rate Restrictions.*
93–47	*93–47 Whether Independent Trust Company Which Conducts Activities on Behalf of Affiliated Bank Must Register as Deposit Broker.*
93–50	*93–50 Circumstances Under Which Well-Capitalized Bank Need Not Notify FDIC of Its Employees' Status as Deposit Brokers.*
93–63	*93–63 Bank Deemed as "Deposit Broker" When Engaging in Deposit Support Services and Customer Service Activities.*
93–68	*93–68 Section 29 of the FDI Act—Effects of an Institution's Inability to Accept Brokered Deposits on Pass-Through Coverage and the Written Notice Requirement.*
93–71	*93–71 Whether Certain Affinity Groups that Endorse the Marketing of Consumer Credit and Deposit Products of a National Bank Are Considered Deposit Brokers.*
94–13	*94–13 Whether Bank Is Considered a Deposit Broker When Offering Secured Credit Card Loans to Its Customers.*
94–15	*94–15 Is Company a Deposit Broker to the Extent It Refers Its Customers to a Particular Bank.*
94–37	*94–37 Deposit Incentive Programs: Would the Bank Be Deemed "Deposit Broker" or Be Confined by Certain Interest Rate Limitations Under Section 29 of the FDI Act.*
94–39	*94–39 Brokered Deposits: Are Funds Deposited in a Special Reserve Bank Account for the Exclusive Benefit of Customers Brokered Deposits Under Sections 29 and 29A of the FDI Act.*
94–40	*94–40 Deposit Broker: Is an Accounting Service for a Health Care Facility Included Under 12 U.S.C. 1831f.*
94–41	*94–41 Requirements For Qualification For "Second-Tier" Broker Exception Under 12 U.S.C. 1831f—1.*
94–49	*94–49 Deposit Broker Statute: Whether Well Capitalized Insured Depository Institutions May Accept Deposits From a Deposit Broker Without Restriction.*
95–24	*95–24 Interest Rate Restrictions Imposed Through the Brokered Deposit Law.*
95–25	*95–25 Applicability of Brokered Deposit Law to National CD Placement Program.*
95–9	*95–9 Whether an Insurance Agent Is a Deposit Broker If It Is Compensated By a Bank For Referring Deposit Customers to the Bank.*
96–4	*96–4 Whether a Foreign Bank Could Be Considered a Deposit Broker, and if They Would Be Required to Notify the FDIC of Their Status.*
99–3	*99–3 Advertisement of "FDIC Insured" CDs by Deposit Brokers.*
99–5	*99–5 Deposit Brokers and "Transferable Custodial Certificates of Deposit."*

Financial Institution Letters

FIL Number/Title	
FIL–42–2016	Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits.
FIL–69–2009	Process for Determining in An Institution Subject to Interest-Rate Restrictions is Operating in a High-Rate Area.

Appendix 2

Historical charts illustrating the final national rate cap, the top rates offered, and the previous and current national rate caps, where applicable, since 2005.

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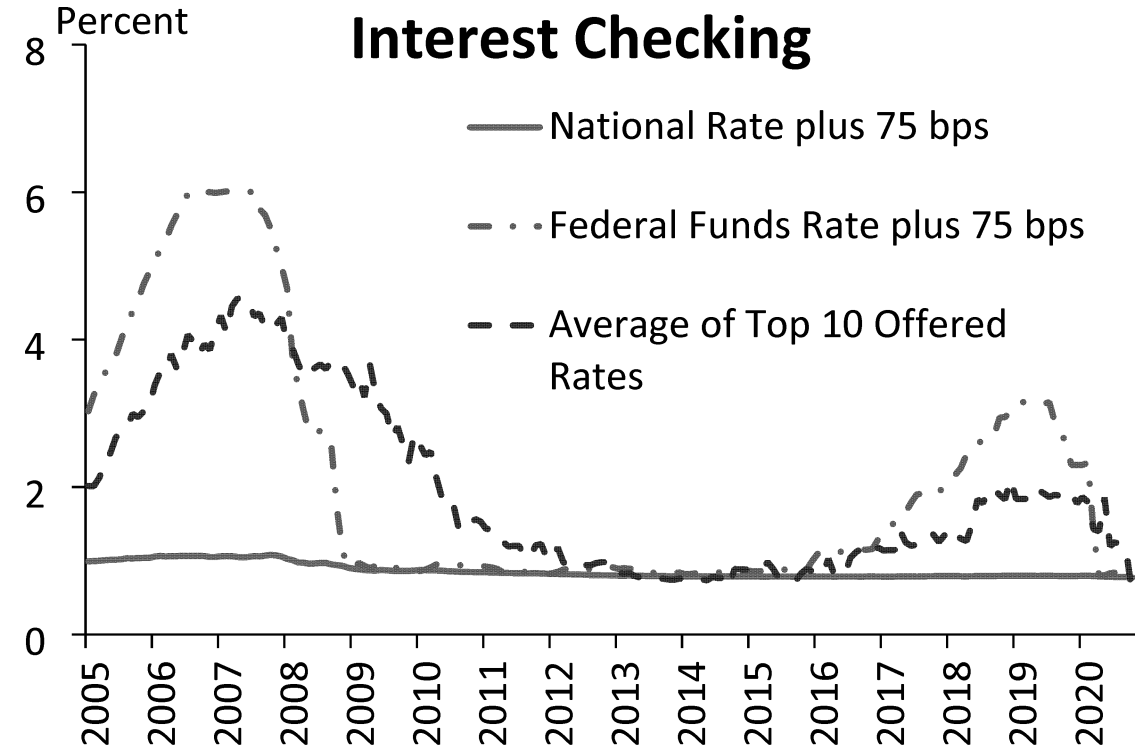

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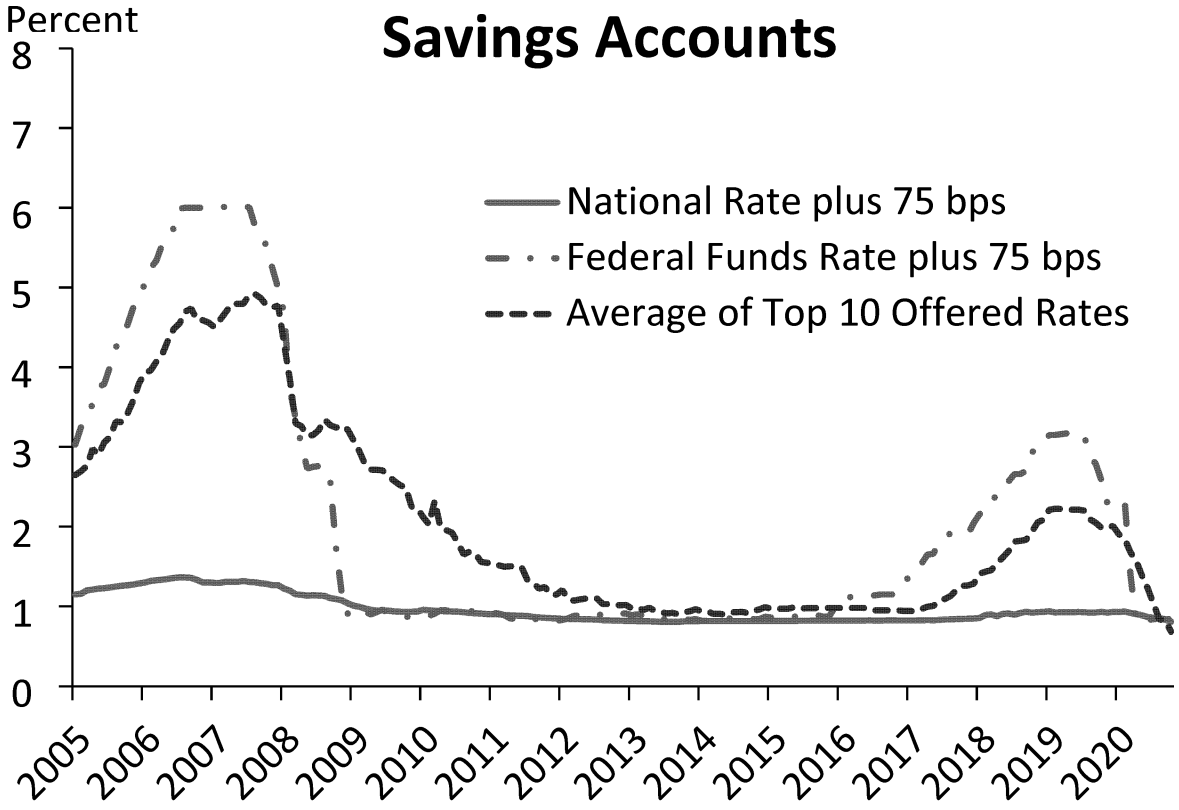

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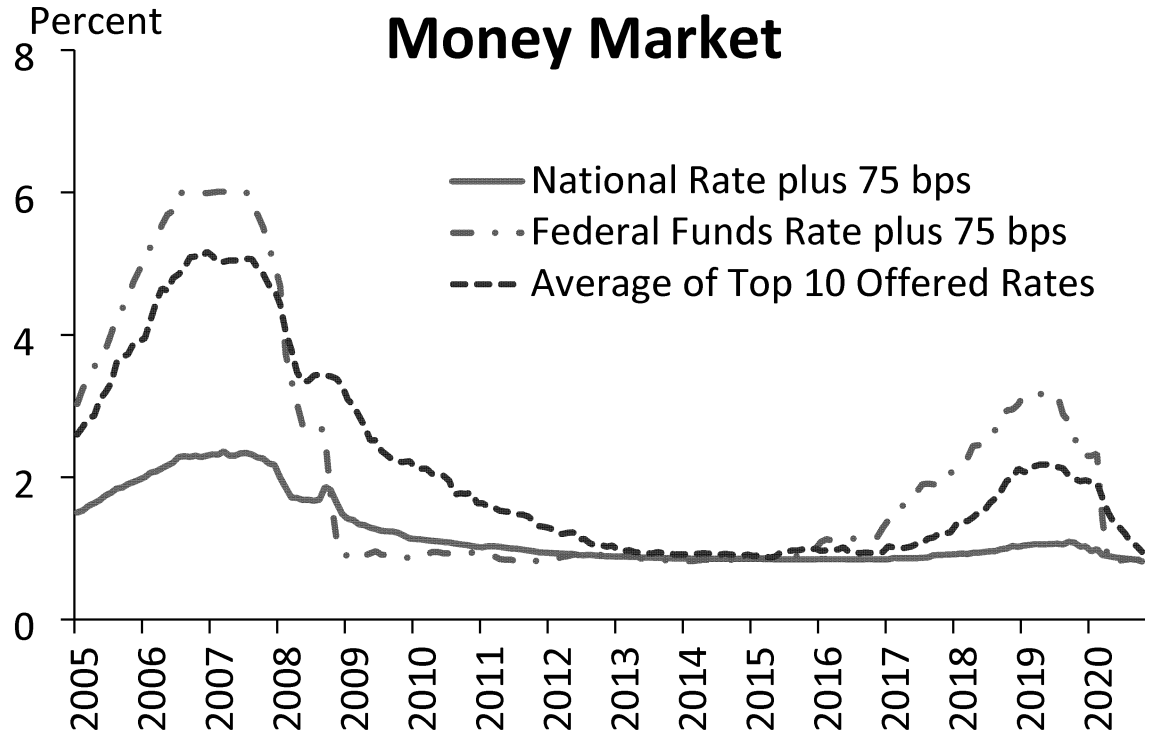

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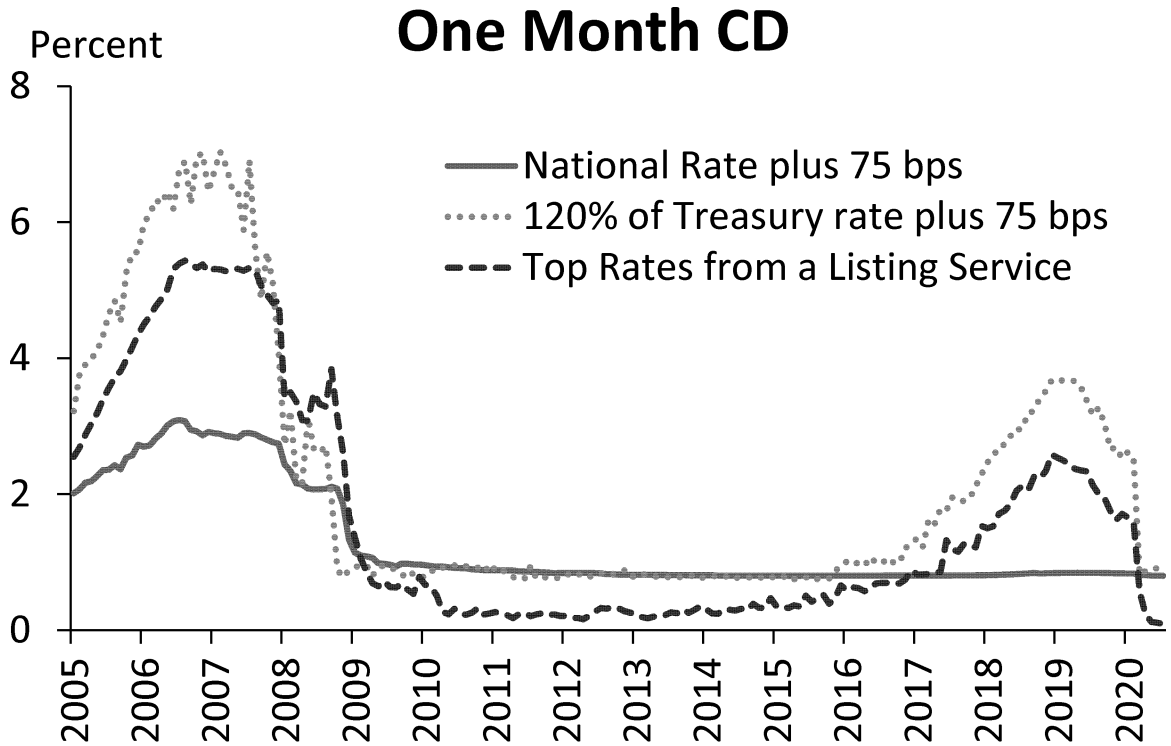
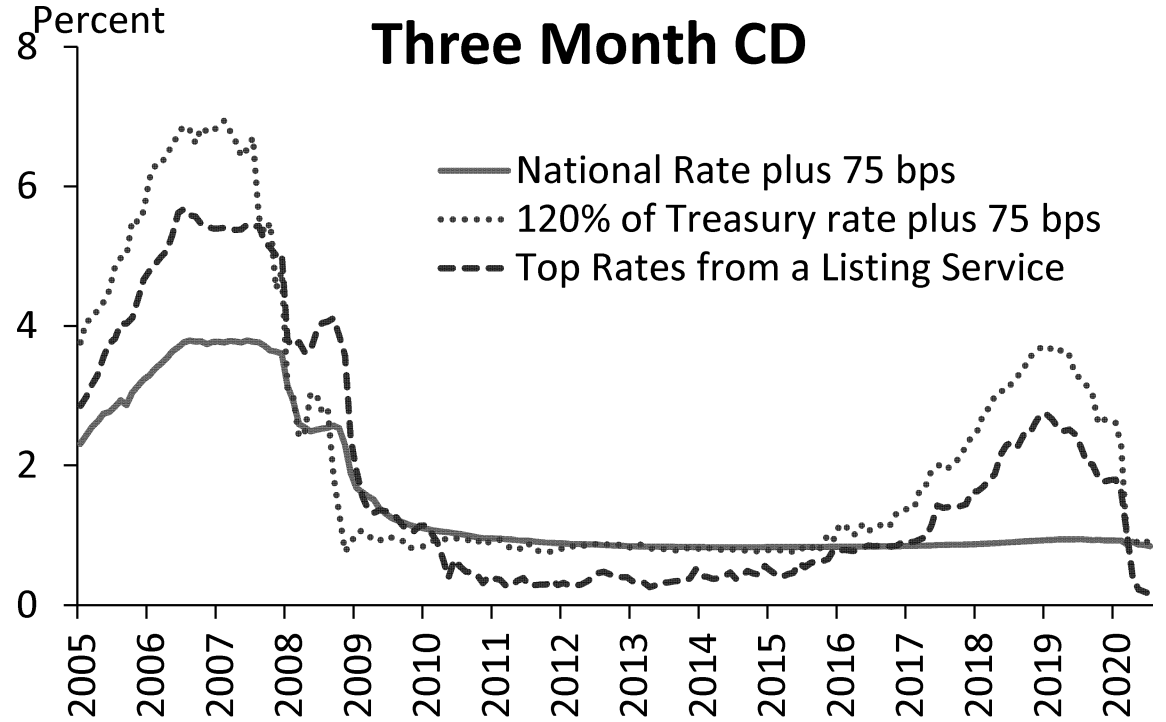
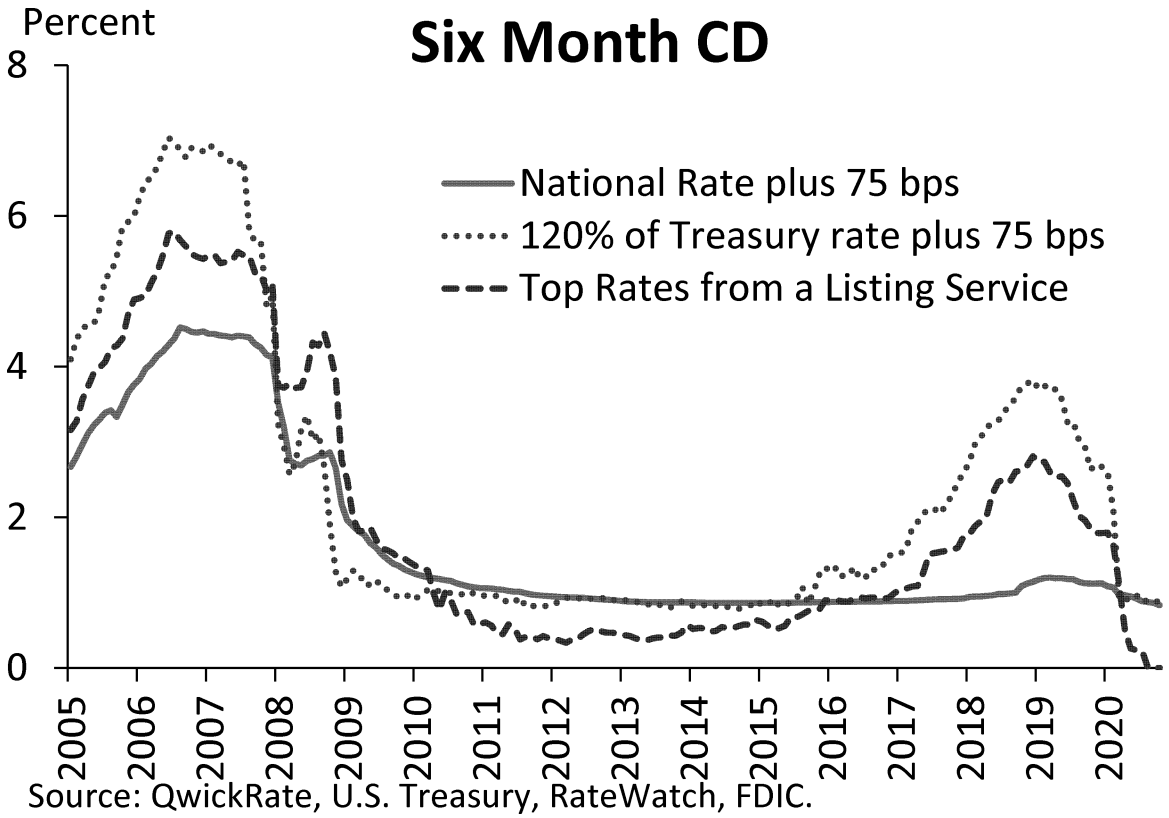


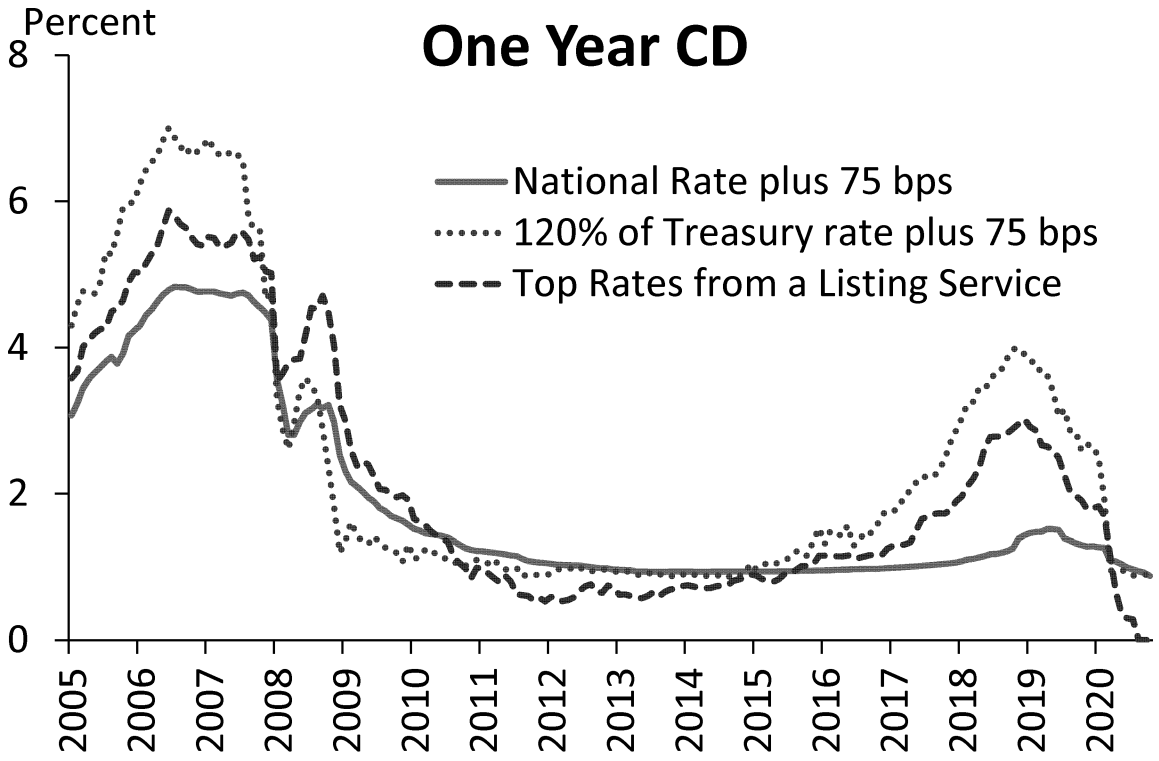
Source: QwickRate, U.S. Treasury, RateWatch, FDIC.



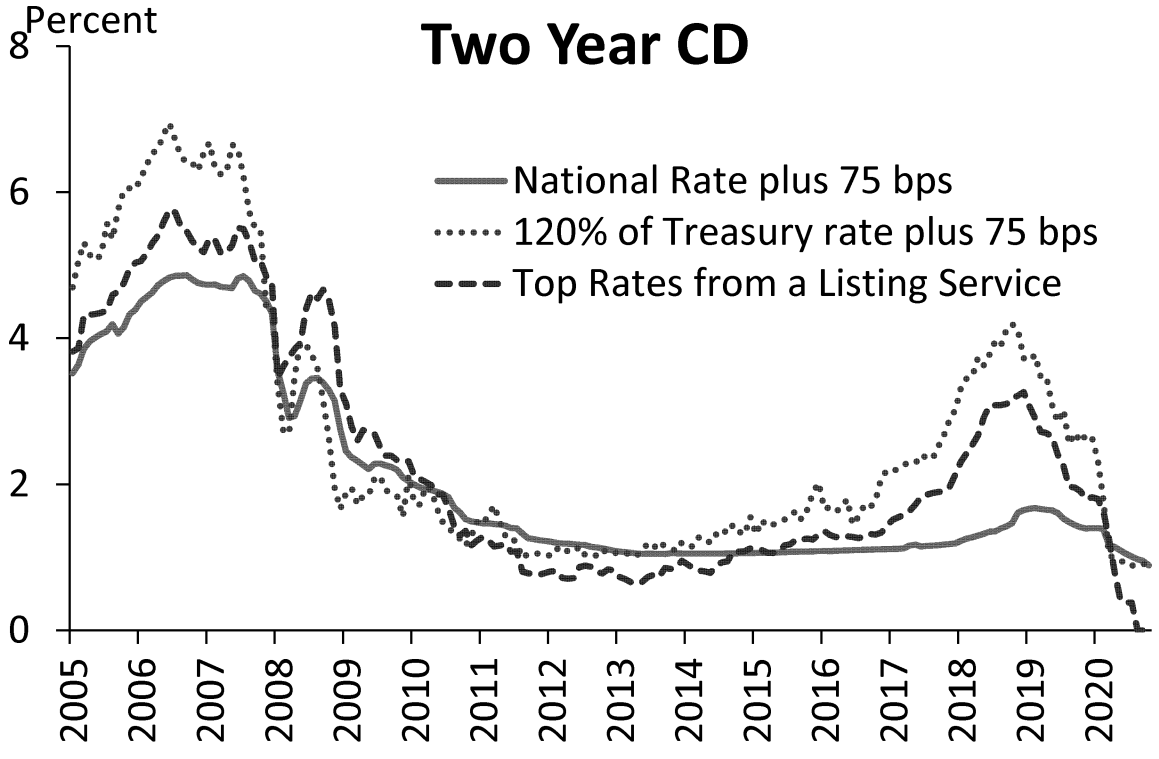
Source: QwickRate, U.S. Treasury, RateWatch, FDIC.



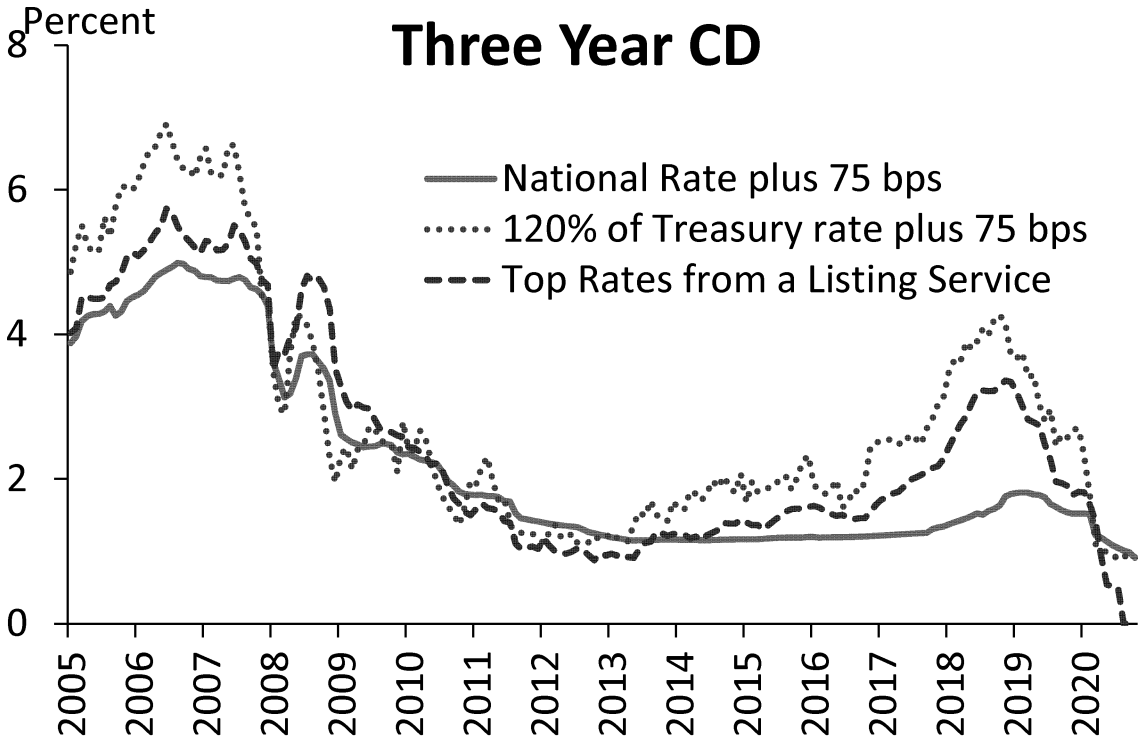
Source: QwickRate, U.S. Treasury, RateWatch, FDIC.



Source: QwickRate, U.S. Treasury, RateWatch, FDIC.

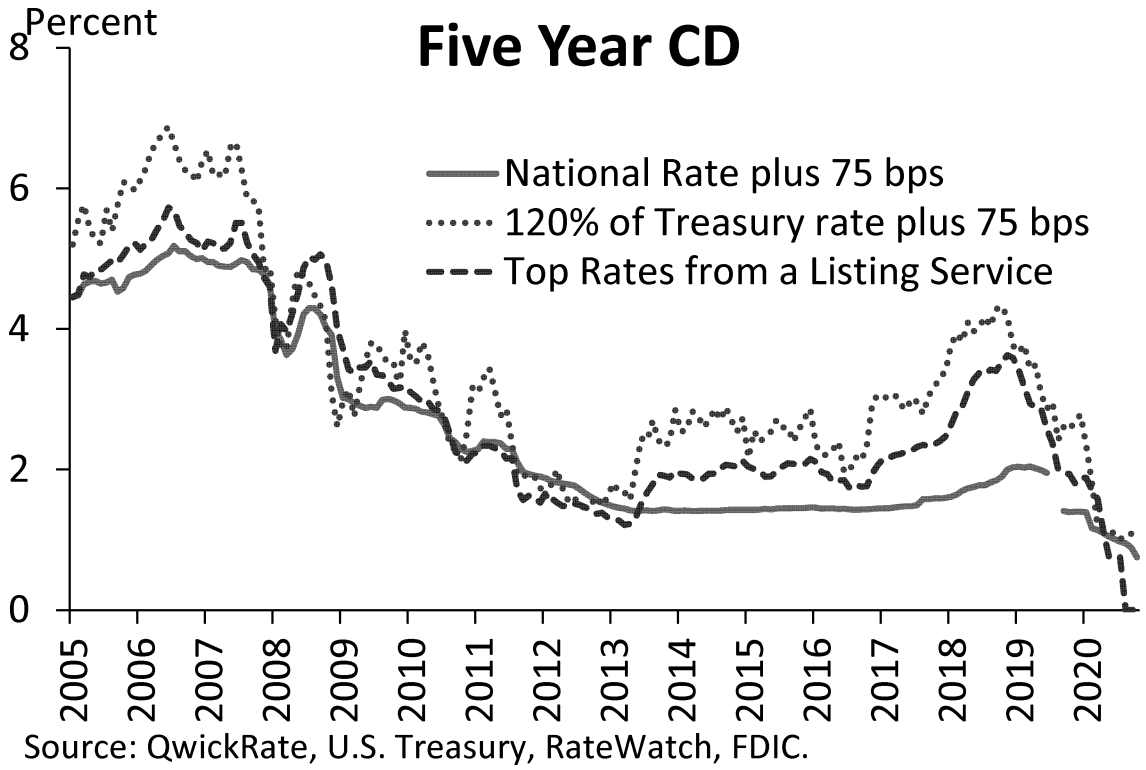


Source: QwickRate, U.S. Treasury, RateWatch, FDIC.



Source: QwickRate, U.S. Treasury, RateWatch, FDIC.

IV. Administrative Law Matters



BILLING CODE 6714–01–C

A. Paperwork Reduction Act

1. Brokered Deposits (RIN 3064–AE84)

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995.[101] In accordance with the requirements of the PRA, the FDIC 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 information collection requirements contained in this final rule are being submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the PRA [102] and section 1320.11 of the OMB's implementing regulations.[103] FDIC is revising its existing information collection entitled ''Application for Waiver of Prohibition on Acceptance of Brokered Deposits'' (OMB Control Number 3064–0099) and will rename the information collection ''Reporting Requirements for Brokered Deposits.''

[101] 44 U.S.C. 3501–3521.

[102] 44 U.S.C. 3507(d).

[103] 5 CFR 1320.

Current Actions

Under the final rule:

- Respondents may file an application with the FDIC for a waiver of the prohibition on the acceptance of brokered deposits;
- Respondents may file a notice informing the FDIC that the respondent is availing itself of the Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Administration;
- Respondents may file a notice informing the FDIC that the respondent is availing itself of the Primary Purpose Exception Based on Enabling Transactions; and
- Respondents may file an application with the FDIC for a Primary Purpose Exception Not Based on a Designated Exception (reporting requirement to obtain or retain a benefit).

The FDIC estimated the annual burden associated with the final rule based on the following assumptions and according to the methodology described below:

1. The FDIC lacks the data necessary to determine the number of third parties which may avail themselves of the primary purpose exception based on placing less than 25 percent of customer assets under administration and therefore, may make a notice submission to the FDIC. When the notice of proposed rulemaking for this rule was published, the FDIC invited comments on how its estimates could be improved [104] but received no comments on the subject.

The primary purpose exception based on placing less than 25 percent of customer assets under administration is expected to be utilized largely by broker-dealers. With few exceptions, broker-dealers must register with the Securities and Exchange Commission and be members of FINRA. There were 3,517 FINRA registered broker-dealer firms in 2019. Some of the 3,517 broker-dealers may not engage in activity which meets the definition of ''deposit broker,'' while some firms which do engage in such activity may not be among the 3,517 FINRA registered broker-dealers. However, in the absence of data to estimate future respondents, consistent with the changes in the rule relative to the NPR, the FDIC assumes that 703 firms will submit notices for a ''designated exception'' under the primary purpose exception based on placing less that 25 percent of customer assets under administration, in the initial year of implementation. Further,

[104] 85 FR 7453 (Feb. 10, 2020).

the FDIC assumes that 176 firms will submit notices for a ''designated exception'' under the primary purpose exception based on placing less that 25 percent of customer assets under administration, on average each year, an ongoing basis.

2. The FDIC lacks the data necessary to determine the number of third parties which may avail themselves of the primary purpose exception based on enabling transactions and other business arrangements and may elect to make a notice submission to the FDIC. When the notice of proposed rulemaking for this rule was published, the FDIC invited comments on how its estimates could be improved but received no comments on the subject.

The FDIC believes that the primary purpose exception based on enabling transactions and on other business arrangements will be utilized by firms engaged in deposit brokering. The FDIC lacks the data necessary to determine the number of firms which engage in deposit brokering. According to Census data, there are 1,223 establishments within the industry in which deposit brokers are classified. Not all 1,223 establishments engage in deposit brokering, and some firms which engage in deposit brokering may be classified in another industry. In the absence of data to estimate future respondents, consistent with the changes in the rule relative to the NPR, the FDIC assumes that 245 firms will submit notices in reliance on the enabling transactions designated exception in the initial year of implementation. Finally, in the absence of data to estimate future respondents, the FDIC assumes that 61 will file a notice in reliance upon the enabling transactions designated exception, or a designated exception identified in the future that requires a notice, and an additional 61 will submit an application, on average each year, on an ongoing basis.

3. The FDIC lacks the data necessary to determine the number of third parties which may avail themselves of the primary purpose exception not based on one of the designated enabling transactions or placement of less than 25 percent of customer assets under administration, and do not meet a designated exception. When the notice of proposed rulemaking for this rule was published, the FDIC invited comments on how its estimates could be improved but received no comments on the subject.

The FDIC believes that the exceptions not based on a designated exception, which includes enabling transactions and placement of less than 25 percent of customer assets under administration, will be sought by firms engaged in deposit brokering. However, the FDIC is unable to determine the number of firms which engage in deposit brokering. According to Census data, there are 1,223 establishments within the industry in which deposit brokers are classified. Not all 1,223 establishments engage in deposit brokering, and some firms which engage in deposit brokering may be classified in another industry. Additionally, the FDIC assumes that 245 firms submit applications for a primary purpose exception in the initial year of implementation. Finally, in the absence of data to estimate future respondents, the FDIC assumes that an additional 61 will submit an application for a primary purpose exception, on average each year, on an ongoing basis.

4. The FDIC lacks the data necessary to determine the number of business lines for which firms may submit applications, and in the absence of a more refined estimate, assumed that all respondents submit one application.

5. The FDIC estimated the amount of time required to complete each notice submission and application type. The notice submission for a primary purpose exception to the definition of deposit broker based on placing less than 25 percent of customer assets under administration, by business line, with IDIs. For this type of submission two items are required: (1) The total amount of customer assets under control by the third party for that particular business line, and (2) the total amount of deposits placed by the third party on behalf of its customers, for that particular business line, at all IDIs, exclusive of the amount of brokered CDs being placed by that third party. Given the ''bright line'' nature of this primary purpose exception, and the limited number of line items required, the FDIC estimated it would take each respondent three hours on average to gather the material and submit the information required for this notice submission.

6. The notice submission for a primary purpose exception to the definition of deposit broker based on placing funds to enable transactions requires an entity to submit the following information: A copy of the form of contract used with customers and with the IDIs in which the third party is placing deposits, showing that all of its customer deposits are in transaction accounts, and that no interest, fees, or other remuneration is being provided to or paid for the transaction accounts. Finally, a submission of this type would need to explain how its customers utilize its services for the purpose of making payments and not for the receipt of a deposit placement service or deposit insurance: And provide a description of the deposit placement arrangement. Because this submission requires more time to prepare than the first, the FDIC estimated it would take each respondent five hours on average the gather the required material and submit the notice.

7. The application for a primary purpose exception from the definition of deposit broker not based on a designated exception, which includes enabling transactions and placement of less than 25 percent of customer assets under administration, requires the items enumerated in the regulation, and due to the number of items requested, the FDIC estimates it would take each respondent 10 hours on average to gather the material required and submit the application.

8. Each notice submission or application has associated quarterly (ongoing) reporting requirements. For approved applications these ongoing requirements are to be spelled out by the FDIC in its written approval. For the first notice submission, the FDIC estimates it would take each respondent an average of 30 minutes per quarter to gather the information and submit the information for an annual average of 2 burden hours. For the second notice submission, the FDIC estimates it will take reach respondent an average of 30 minutes per year to gather and submit the information. The FDIC assumes that the initial quarterly submission may take longer to prepare, but once reporting systems are in place, the FDIC believes an average of 30 minutes per quarter is a reasonable estimate for this ongoing reporting burden. For the application requirement, due to its greater number of required items, is estimated to take each respondent an average of 0.25 hours per quarter to gather the information and submit it for an annual average of 1 burden hour.

9. The FDIC revised its estimates for the information collection ''Application for Waiver of Prohibition on Acceptance of Brokered Deposits.'' The FDIC estimates nine IDIs will file this application each year, on average. Each IDI applicant will spend six hours, on average, to file. Thus, the FDIC estimates the average annual burden at 54 hours.

ESTIMATED ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated average number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Initial Implementation							
Notice submission for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Administration.	Reporting	Obtain or Retain a Benefit.	703	1	3	On Occasion ...	2,109
Notice submission for Primary Purpose Exception Based on Enabling Transactions.	Reporting	Obtain or Retain a Benefit.	245	1	5	On Occasion ...	1,225
Application for Primary Purpose Exception Not Based on the Business Arrangements that do not meet a Designated Exception.	Reporting	Obtain or Retain a Benefit.	245	1	10	On Occasion ...	2,450
Ongoing							
Notice submission for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Administration.	Reporting	Obtain or Retain a Benefit.	176	4	0.5	Quarterly	352
Notice Submission for Primary Purpose Exception Based on Enabling Transactions.	Reporting	Obtain or Retain a Benefit.	61	1	0.5	Annual	30.5
Reporting for Primary Purpose Exception Not Based on the Business Arrangements that do not meet a Designated Exception.	Reporting	Obtain or Retain a Benefit.	61	4	0.25	Quarterly	61
Application for Waiver of Prohibition on Acceptance of Brokered Deposits.	Reporting	Obtain or Retain a Benefit.	9	1	6	On Occasion ...	54
Total Estimated Annual Burden Hours	.....	.....	.....	.....	.....	.....	6,281.5

Note: The estimated number of respondents in the *Initial Implementation* section is an annual average calculated over three years.

2. Interest Rate Restrictions (RIN 3064–AF02)

In accordance with the requirements of the PRA,[105] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. This final rule does not create a new or revise an existing information collection as it relates to the interest rate restrictions. Therefore, no PRA clearance submission to OMB will be made.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the rule on small entities.[106] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets less than or equal to $600 million.[107]

Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions.

1. Brokered Deposits Final Rule (AE94)

The FDIC does not believe that the rule will have a significant economic effect on a substantial number of small entities. However, some expected effects of the rule are difficult to assess or accurately quantify given current information, therefore the FDIC has included a Final Regulatory Flexibility Act (RFA) Analysis in this section.

Reasons Why This Action Is Being Considered

As previously discussed, the FDIC issued an ANPR in 2018 to obtain input from the public on its brokered deposit and interest rate regulations in light of significant changes in technology, business models, the economic environment, and products since the agency's regulations relating to brokered deposits were adopted. Generally speaking, commenters offered information and expressed options that suggested the FDIC needed to clarify and update its historical interpretation of the ''deposit broker'' definition to better align with current market practices and risks associated with brokered deposits.

Policy Objectives

As previously discussed, the FDIC is amending its regulations relating to brokered deposits in order to modernize those regulations to reflect recent technological changes and innovations that have occurred. Additionally, the FDIC seeks to continue to promote safe and sound practices by FDIC-insured depository institutions.

Legal Basis

The FDIC is adopting this rule under authorities granted by Section 29 of the FDI Act. The law restricts troubled institutions (*i.e.*, those that are not well capitalized) from (1) accepting deposits by or through a deposit broker without a waiver and (2) soliciting deposits by offering rates of interest on deposits that were significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area. For a

[105] 44 U.S.C. 3501–3521.

[106] 5 U.S.C. 601 *et seq.*

[107] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective Aug. 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

more detailed discussion of the rule's legal basis please refer to section I(B).

Description of the Rule

A person meets the ''deposit broker'' definition under Section 29 of the FDI Act if it is engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties. An agent or trustee meets the ''deposit broker'' definition when establishing a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan. Additionally, Section 29 provides nine statutory exceptions to the definition of deposit broker and, as noted earlier, the FDIC added one regulatory exception to the definition. The FDIC is adopting a new framework for analyzing certain provisions of the statutory definition. Among other things, through this rulemaking, the FDIC is amending the primary purpose exception. For a more detailed description of the rule please refer to section I(C) ''Final Rule and Discussion of Comments.''

Small Entities Affected

The FDIC insures 5,075 depository institutions, of which 3,665 are defined as small institutions by the terms of the RFA.[108] Additionally, of those 3,665 small, FDIC-insured institutions, 1,086 currently report holding some volume of brokered deposits. Further, of those 3,665 small, FDIC-insured institutions, 3,656 are currently classified as well capitalized, while nine are less than well capitalized based on capital ratios reported in their Call Reports.[109]

Expected Effects

There are potentially three four categories of effects of the rule on small, FDIC-insured institutions: Effects applicable to potentially any small, insured institution; effects applicable to small, less than well-capitalized institutions; effects applicable to nonbank subsidiaries of small, FDIC-insured institutions that may or may not be deemed deposit brokers; and reporting compliance requirements for small, covered entities.

All Small, FDIC-Insured Institutions

The rule could immediately affect the 1,086 small, FDIC-insured institutions currently reporting brokered deposits. Going forward, the rule could affect all 3,665 small, FDIC-insured institutions whose decisions regarding the types of deposits to accept could be affected.

The rule would benefit insured institutions and other interested parties by providing greater legal clarity regarding the classification and treatment of brokered deposits. The FDIC believes that as result of this increased clarity, the rule would reduce the extent of reliance by banks and third parties on FDIC Staff Advisory Opinions and informal written and telephonic inquiries with FDIC staff. This would have two important benefits. First, the likelihood of inconsistent outcomes, where some institutions may report certain types of deposits as brokered and others do not, would be reduced. Second, to the extent the classification of deposits as brokered or non-brokered can be clearly addressed in regulation, the need for potentially time-consuming analyses can be minimized.

The FDIC has heard from a number of insured institutions that they perceive a stigma associated with accepting brokered deposits. Historical experience has been that higher use of deposits currently reported to the FDIC as brokered has been associated with higher probability of bank failure and higher deposit insurance fund loss rates.[110] The funding characteristics of brokered deposits, however, are non-uniform. For example, brokered CDs are often used by bank customers searching for relatively high yields on their insured deposits, rather than as part of a relationship with a bank, and as such these deposits may be less stable and more subject to deposit interest rate competition. The behavior of deposits placed through certain sweep arrangements or that underlie prepaid card programs may be more based on a business relationship than on interest rate competition. Given limitations on available data, however, historical studies have not been able to differentiate the experience of banks based on the different types of deposits accepted. To the extent the rule reduces bankers' perception of a stigma associated with certain types of deposits, more institutions may be incentivized to accept such deposits.

The rule could incentivize the development of banking relationships between small, FDIC-insured institutions and other firms. The new opportunities could spur growth in the types of companies that provide third party deposit placement services, potentially resulting in greater access to, or use of, bank deposits by a greater variety of customers. Further, such growth could be of benefit to small, FDIC-insured institutions allowing them to compete against large financial institutions that are utilizing internet based deposit gathering methods across the country. It is difficult to accurately estimate such potential effects with the information available to the FDIC, because such effects depend, in part, on the future commercial development of such activities.

FDIC deposit insurance assessments would be affected by the changes to the definition of deposit broker, potentially affecting any insured institution that currently accepts brokered deposits or might do so in the future. Since 2009, significant concentrations of brokered deposits can increase an institution's quarterly assessments, depending on other factors. To the extent that certain deposits would no longer be considered brokered deposits under this rule, a bank's assessment may decrease, all else equal.

Small, FDIC-insured institutions could benefit from the rule by having greater certainty and greater access to funding sources that would no longer be designated as brokered deposits, thereby easing their liquidity planning in the event they fall below well capitalized and become subject to the restrictions set forth in the law and regulations and reducing the likelihood that a liquidity failure of an otherwise viable institution might be precipitated by the brokered deposit regulations. Another benefit of the rule could result if greater access to funding sources supported small FDIC-insured institutions' ability to provide credit. However, these effects are difficult to estimate because the decision to receive third party deposits depends on the specific financial conditions of each bank, fluctuating market conditions for third party deposits, and future management decisions.

The rule would establish reporting requirements for IDIs and other nonbank third parties that apply for and maintain a primary purpose exception. As noted previously, however, the FDIC anticipates that nonbank third parties are likely to apply on their own behalf, given that the information required to

[108] Call Report, June 30, 2020. Nine insured domestic branches of foreign banks are excluded from the count of FDIC-insured depository institutions. These branches of foreign banks are not ''small entities'' for purposes of the RFA.

[109] Information based on June 30, 2020 Consolidated Reports of Condition and Income. The 9 institutions do not include any quantitatively well capitalized institutions that may have been administratively classified as less than well capitalized. See generally, FDIC—12 CFR 324.403(b)(1)(v); Board of Governors of the Federal Reserve System—12 CFR 208.43(b)(1)(v); Office of the Comptroller of the Currency—12 CFR 6.4(c)(1)(v).

[110] *See* FDIC's 2011 Study on Core and Brokered Deposits, July 8, 2011.

complete an application will be in possession of the nonbank third party (rather than the bank). The FDIC views the potential burden on small FDIC-insured institutions under the rule as minimal.

Less Than Well-Capitalized Institutions

As discussed previously, the acceptance of brokered deposits is subject to statutory and regulatory restrictions for those banks that are less than well capitalized. Adequately capitalized banks may not accept brokered deposits without a waiver from the FDIC, and banks that are less than adequately capitalized may not accept them at all. As a result, adequately capitalized and undercapitalized banks generally hold less brokered deposits—as of June 30, 2020, brokered deposits make up approximately 1.3 percent of domestic deposits held by less than well capitalized banks, well below the 7.7 percent held by all IDIs.[111] By generally reducing the scope of deposits that are considered brokered, the rule allows less than well capitalized banks to increase their holdings of deposits that are currently reported as brokered but will not be reported as brokered under the final rule. As of June 30, 2020, there are only nine less than well capitalized small, FDIC-insured institutions based on Call Report information. These banks hold approximately $2.5 billion in assets, $1.7 billion in domestic deposits, and $21.7 million in brokered deposits.[112] These banks could be directly affected by the rule in that they could potentially accept more or different types of deposits currently designated as brokered.

Broadly speaking with respect to future developments, another aspect of brokered deposit restrictions is that, consistent with their statutory purpose, they act as a constraint on growth and risk-taking by troubled institutions. Conversely, as noted previously, access to funding can prevent needless liquidity failures of viable institutions.

Nonbank Subsidiaries of Small, FDIC-Insured Institutions That May or May Not Be Deposit Brokers

The revisions to the brokered deposit regulations could have effects on some nonbank subsidiaries of small, FDIC-insured institutions. For example, subsidiaries of small, FDIC-insured institutions that may currently meet the deposit broker definition would no longer be a deposit broker under the rule if they solely place deposits at one IDI. Additionally, some nonbank subsidiaries of small, FDIC-insured institutions could employ or seek to determine whether they meet the primary purpose exception. This may include submitting notices or filing applications by some third parties that seek to avail themselves of the primary purpose exception, or by banks submitting notices or filing application on behalf of such entities. Ongoing reporting by these entities is also potentially expected under the final rule.

Reporting Requirements

As previously discussed, the final rule establishes some reporting obligations for certain insured depository institutions or nonbank third parties [113] that meets the ''deposit broker'' definition by either placing (or facilitating the placement of) customer deposits at insured depository institutions and seeks to be excluded from that definition. The rule establishes, for entities that do not engage in one of the designated expectations, an application process under which any agent or nominee that seeks to avail itself of the primary purpose exception, or an insured depository institution acting on behalf of an agent or nominee, could request that the FDIC consider certain deposits as non-brokered as a result of the primary purpose exception. As previously discussed, relative to the NPR, the final rule establishes additional designated exceptions that will not require an application. However, institutions that are eligible for these designated exceptions will be required to file a notice submission to the FDIC. Further, certain entities granted an exception under the primary purpose exception may also be subject to periodic reporting requirements under the final rule. These reporting requirements will allow the FDIC to monitor the applicability of the primary purpose exception. Finally, in the event that an entity that has applied and been approved for a primary purpose exception has undergone material changes to its business that renders the business no longer eligible for the primary purpose exception, the FDIC will be able to require the entity to refile a notice, submit an application, reapply for approval, impose additional conditions on the approval, or withdraw a previously granted approval, with notice to the entity.

As previously discussed in the Expected Effect Section, the final rule establishes reporting requirements for an estimated 176 and 703 firms during the year of implementation, and between 9 and 245 firms each year after. The FDIC does not currently have access to data that would facilitate an accurate estimate of how many of these firms are considered ''small'' for the purposes of RFA. Therefore, the FDIC believes it is possible that the reporting requirements of the final rule could affect up to 703 small entities during the year of implementation, and up to 245 small entities each year afterword.

As previously discussed in the expected Effects Section, in the initial year of implementation the FDIC estimates that the notice for the ''25 percent'' business relationship will be three hours to complete on average, and 0.5 hours per quarter each year after that. In the initial year of implementation, the FDIC estimates that the notice for the ''enabling transactions'' will take 5 hours to complete on average, and 0.5 hours each year after that. In the initial year of implementation, the FDIC estimates that the application for exception based on not enabling transactions and other business arrangements, or placing less that 25 percent of customer assets under management will take 10 hours to complete on average, and 0.25 hour per quarter each year after that. Therefore, based on the above assumptions and methodology, the FDIC estimates the final rule imposes an annual reporting burden of 5,784 hours for the first year and 497.5 hours each year after that for all affected entities. This equates to estimated compliance costs of $613,740 in the first year and $51,589 each year after that for all effected entities.[114]

[111] Call Report data, June 30, 2020.

[112] *Id.*

[113] The FDIC will look to each separately incorporated legal entity as its own ''third party'' for purposes of this application process.

[114] For the applications relating to exceptions from the definition of ''deposit broker,'' the FDIC used the wage estimates from the Bureau of Labor Statistics (BLS) ''National Industry Specific Occupational Employment and Wage Estimates: Securities, Commodity Contracts, and Other Financial Investments and Related Activities Sector'' (May 2018), while for the Application for Waiver of Prohibition on Acceptance of Brokered Deposits, the FDIC used the wage estimates from the BLS ''National Industry-Specific Occupational Employment and Wage Estimates: Depository Credit Intermediation Sector'' (May 2018). Other BLS data used were the Employer Cost of Employee Compensation data (June 2019), and the Consumer Price Index (June 2019). Hourly wage estimates at the 75th percentile wage were used, except when the estimate was greater than $100, in which case $100 per hour was used, as the BLS does not report hourly wages in excess of $100. The 75th percentile wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the June 2019 Employer Cost of Employee Compensation data, compensation rates for health and other benefits are 33.8 percent of total compensation. Additionally, the wage has been adjusted for

Continued

Again the FDIC does not currently have access to data that would facilitate an accurate estimate of how many of these firms are considered ''small'' for the purposes of RFA. Therefore, therefore the FDIC believes it is possible that the reporting requirements of the final rule could pose reporting compliance costs up to $613,740 in the first year for small entities, and up to $51,589 each year after for small entities.

Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this proposed rule and any other federal rule.

2. Interest Rate Restrictions (RIN 3064–AF02)

FDIC is revising its regulations relating to interest rate restrictions that apply to less than well capitalized insured depository institutions, by amending the methodology for calculating the national rate and national rate cap. The also modifies the current local rate cap calculation and process.

Specifically, the rule defines the national rate for a deposit product as the average rate for that product, where the average is weighted by domestic deposit share. The proposed national rate cap is the higher of (1) the national rate, as revised to be based on weighting by deposits rather than branches (and including credit unions), plus 75 basis points; or (2) 120 percent of the current yield on similar maturity U.S. Treasury obligations, plus 75 basis points.

Because the FDIC's experience suggests some institutions compete for particular products within their local market area, the rule would continue to provide a local rate cap process.

Specifically, the rule would allow less than well capitalized institutions to provide evidence that any bank or credit union in its local market offers a rate on particular deposit product in excess of the national rate cap. If sufficient evidence is provided, then the less than well capitalized institution would be allowed to offer 90 percent of the competing institution's rate on the particular product.

As described in section II(G), above, the FDIC is adopting the national rate methodology as proposed, with a revision to include the rates offered by credit unions in addition to the rates offered by FDIC-insured institutions. Under the final rule, the national rate for a particular deposit product will be the deposit-weighted average rate for that product.

The FDIC is also adopting the proposed methodology for calculating the national rate caps, with a modification suggested by commenters. The proposed methodology defined the national rate cap for a particular deposit product as the higher of the national rate plus 75 basis points, or the 95th percentile of rates weighted by domestic deposits. The adopted methodology defines the national rate cap for a particular deposit product as the higher of the national rate plus 75 basis points or 120 percent of the current yield on a similar maturity U.S. Treasury obligation, plus 75 basis points. This ''Treasury-based'' second prong would also provide that, for non-maturity deposits, the rate cap is defined as the midpoint of the target range for the Federal funds rate, plus 75 basis points.

Finally, for the local rate cap the FDIC is adopting the proposed cap of 90 percent of the highest offered rate. The final rule also eliminates the current two-step process where less than well capitalized institutions request a high rate determination from the FDIC and, if approved, calculate the prevailing rate within local markets. Instead, a less than well capitalized institution must notify its appropriate FDIC regional office that it intends to offer a rate that is above the national rate cap and provide evidence that it is competing against an institution or credit union that is offering a rate in its local market area in excess of the national rate cap. The institution would then be allowed to offer 90 percent of the rate offered by a competitor in the institution's local market area.

As of June 30, 2020, the FDIC insured 5,075 institutions, of which 3,665 are small for purposes of the RFA.[115] The adopted national rate caps will affect less than well-capitalized small institutions if those institutions currently offer deposit products with rates above the adopted caps and their local competitors do not offer similarly high rates. As of June 30, 2020, 10 insured institutions are quantitatively less than well-capitalized, of which nine are small for purposes of the RFA.[116] None of the eight small, less than well-capitalized institutions for which the FDIC had interest rate data offered rates above either the current national rate caps or the national rate caps as defined in this final rule across 11 deposit products analyzed for the month of September.[117] Thus, the FDIC does not believe the final rule will significantly affect any small, FDIC-insured institutions.

Accordingly, the FDIC certifies that this rule will not have a significant economic effect on a substantial number of small entities.

One commenter to the NPR suggested that the FDIC sample a larger group of small banks which could become less than well capitalized and run stress tests simulating various interest rate environments to determine whether the institutions would be able to raise or retain funding under the proposed rate caps. Such a stress testing exercise would be difficult and heavily dependent on assumptions not only about the shape and level of the Treasury yield curve, but about national and local demand for loans and deposits and the nature of deposit interest rate competition resulting from these factors. In response to the comment, the FDIC notes that as described throughout this preamble, the rate caps under this rule are constructed to be more responsive to the prevailing interest rate environment and are generally expected to be moderately less restrictive than the current rate caps.

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[118] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on IDIs, including small IDIs, and customers of IDIs, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[119] The FDIC considered the administrative burdens

inflation according to BLS data on the Consumer Price Index for Urban Consumers (CPI–U), so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 1.86 percent between May 2018 and June 2019.

[115] June 30, 2020, Call Report data.

[116] *Id.*

[117] The FDIC surveyed rates offered on savings, interest checking, and money market demand accounts, as well as CDs of 1, 3, 6, 12, 24, 36, 48, and 60-month maturities. Only non-jumbo accounts were considered, and not every institution offered every type of account.

[118] 12 U.S.C. 4802(a).

[119] 12 U.S.C. 4802.

and benefits of the final rule in determining its effective date and administrative compliance requirements. As such, the final rule will be effective on April 1, 2021, with full compliance with the brokered deposit part of the regulation extended to January 1, 2022.

D. Congressional Review Act

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[120] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[121] 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.[122] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

E. Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act [123] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings Associations.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

Authority and Issuance

For the reasons stated in the preamble, the FDIC amends 12 CFR parts 303 and 337 as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a), (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415 and 15 U.S.C. 1601–1607.

■ 2. Revise § 303.243 to read as follows:

§ 303.243 Brokered deposits.

(a) *Brokered deposit waivers*—(1) *Scope.* Pursuant to section 29 of the FDI Act (12 U.S.C. 1831f) and part 337 of this chapter, an adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposits unless it has obtained a waiver from the FDIC. A well-capitalized insured depository institution may accept brokered deposits without a waiver, and an undercapitalized insured depository institution may not accept, renew or roll over any brokered deposits under any circumstances. This section contains the procedures to be followed to file with the FDIC for a brokered deposit waiver. The FDIC will provide notice to the depository institution's appropriate federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Prior notice and/or consultation shall not be required in any particular case if the FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(2) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(3) *Content of filing.* The application shall contain the following:

(i) The time period for which the waiver is requested;

(ii) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;

(iii) The volume, rates and maturities of the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(iv) How brokered deposits are costed and compared to other funding alternatives and how they are used in the institution's lending and investment activities, including a detailed discussion of asset growth plans;

(v) Procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(vi) Management systems overseeing the solicitation, acceptance and use of brokered deposits;

(vii) A recent consolidated financial statement with balance sheet and income statements; and

(viii) The reasons the institution believes its acceptance, renewal, or rollover of brokered deposits would pose no undue risk.

(4) *Additional information.* The FDIC may request additional information at any time during processing of the application.

(5) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in this paragraph will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. For the purpose of this section, an applicant will be deemed an eligible depository institution if it satisfies all of the criteria contained in § 303.2(r) except that the applicant may be adequately capitalized rather than well-capitalized. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2). Absent such removal, an application processed under expedited procedures will be deemed approved 21 days after the FDIC's receipt of a substantially complete application.

(6) *Standard processing.* For those filings which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(7) *Conditions for approval.* A waiver issued pursuant to this section shall:

(i) Be for a fixed period, generally no longer than two years, but may be extended upon refiling; and

(ii) May be revoked by the FDIC at any time by written notice to the institution.

(b) *Primary purpose exception notices and applications*—(1) *Scope.* This section sets forth a process for an agent or nominee, or an insured depository institution on behalf of an agent or

[120] 5 U.S.C. 801 *et seq.*

[121] 5 U.S.C. 801(a)(3).

[122] 5 U.S.C. 804(2).

[123] 12 U.S.C. 4809.

nominee, to notify the FDIC that it will rely upon a designated exception in § 337.6(a)(5)(v)(I)(*1*)(*i*) and (*ii*) of this chapter. This section also sets forth a process for an agent or nominee, or an insured depository institution on behalf of an agent or nominee, to apply for the primary purpose exception, as described in § 337.6(a)(5)(v)(I)(*2*) of this chapter.

(2) *Definitions.* For purposes of this paragraph (b):

(i) *Third party* means an agent or nominee that submits a notice that it will rely upon a designated exception in § 337.6(a)(5)(v)(I)(*1*)(*i*) and (*ii*) of this chapter or applies to be excluded from the definition of deposit broker pursuant to the primary purpose exception as described in § 337.6(a)(5)(v)(I)(*2*) of this chapter.

(ii) *Notice filer* means a third party or an insured depository institution on behalf of a third party, that submits a written notice that the third party will rely upon a designated business exception in § 337.6(a)(5)(v)(I)(*1*)(*i*) and (*ii*) of this chapter.

(iii) *Applicant* means a third party, or an insured depository institution on behalf of a third party, that applies to be excluded from the definition of deposit broker pursuant to the primary purpose exception, as described in § 337.6(a)(5)(v)(I)(*2*) of this chapter.

(3) *Notice requirement for designated business exceptions.* A third party, or an insured depository institution on behalf of a third party, must notify the FDIC through a written notice that the third party will rely upon a designated business exception described in § 337.6(a)(5)(v)(I)(*1*)(*i*) and (*ii*) of this chapter in order to rely on that designated business exception.

(i) *Contents of notice.* The notice must include: The designated exception upon which the third party will rely; a brief description of the business line; the applicable specific contents for the designated exception; either a statement that there is no involvement of any additional third party who qualifies as a deposit broker or a brief description of any additional third party that may qualify as a deposit broker; and if the notice is provided by a nonbank third party, a list of the insured depository institutions that are receiving deposits by or through the particular business line. The applicable specific contents for the following designated exceptions are:

(A) *25 percent test (as described in § 337.6(a)(5)(v)(I)(1)(i) of this chapter).* (*1*) The total amount of customer assets under administration by the third party for that particular business line; and

(*2*) The total amount of deposits placed by the third party on behalf of its customers, for that particular business line, at all depository institutions, being placed by that third party.

(B) *Enabling transactions test (as described in § 337.6(a)(5)(v)(I)(1)(ii) of this chapter).* (*1*) Contractual evidence that there is no interest, fees, or other remuneration, being paid to any customer accounts; and

(*2*) A certification that all customer deposits that are placed at insured depository institutions are in transaction accounts.

(ii) *Additional information for notices.* The FDIC may request additional information from the notice filer at any time after receipt of the notice.

(iii) *Additional notice filers.* The FDIC may include notice and/or reporting requirements as part of a designated exception identified under § 337.6(a)(5)(v)(I)(*2*)(*xiv*) of this chapter.

(iv) *Subsequent notices.* A notice filer that previously submitted a notice under this section shall submit a subsequent notice to the FDIC if, at any point, the notice filer no longer meets the designated business exception that was the subject of its previous notice.

(v) *Ongoing requirements for notice filers.* Notice filers that submit a notice under *the 25 percent test* must provide quarterly updates to the FDIC on the figures described in paragraph (b)(3)(i)(A) of this section that were provided as part of the written notice. Notice filers that submit a notice under *the enabling transactions test* must provide an annual certification to the FDIC that the third party continues to place all customer funds at insured depository institutions into transaction accounts and that customers do not receive any interest, fees, or other remuneration.

(vi) *Revocation of primary purpose exception.* The FDIC may, with notice, revoke a primary purpose exception of a third party, or a person required to submit a notice under paragraph (b)(3)(iii) of this section, that qualifies for the primary purpose exception due to reliance on a designated exception, if:

(A) The third party no longer meets the criteria for a designated exception;

(B) The notice or subsequent reporting is inaccurate; or

(C) The notice filer fails to submit required reports.

(4) *Application requirements.* A third party, or an insured depository institution on behalf of a third party, may submit an application to the FDIC seeking a primary purpose exception for business relationships not designated in § 337.6(a)(5)(v)(I)(*1*) of this chapter.

(i) *For applications for primary purpose exception to enable transactions with fees, interest, or other remuneration provided to the depositor.* Applicants that seek the primary purpose exception where customer funds that are placed at depository institutions are placed into transaction accounts, and fees, interest, or other remuneration are provided to the depositor, must include the following information, with respect to the particular business line:

(A) Contractual evidence on the amount of interest, fees, or other remuneration, being paid on customer accounts;

(B) Any marketing materials provided by the third party to insured depository institutions or its customers;

(C) The average number of transactions for all customer accounts, and an explanation of how its customers utilize its services for the purpose of making payments and not for the receipt of a deposit placement service or deposit insurance;

(D) The percentage of customer funds placed in deposit accounts that are not transaction accounts;

(E) A description of any additional third parties that provide assistance with the placement of deposits at insured depository institutions; and

(F) Any other information that the FDIC requires to initiate its review and render the application complete.

(ii) *For applications for primary purpose exception not covered by paragraph (b)(4)(i) of this section.* Applicants that seek the primary purpose exception, other than applications under paragraph (b)(4)(i) of this section, must include, to the extent applicable:

(A) A description of the deposit placement arrangements between the third party and insured depository institutions for the particular business line, including the services provided by any relevant third parties;

(B) A description of the particular business line;

(C) A description of the primary purpose of the particular business line;

(D) The total amount of customer assets under management by the third party, with respect to the particular business line;

(E) The total amount of deposits placed by the third party at all insured depository institutions, including the amounts placed with the applicant, if the applicant is an insured depository institution, with respect to the particular business line. This includes the total amount of term deposits and transactional deposits placed by the third party, but should be exclusive of the amount of brokered CDs, as defined

in § 337.6(a)(5)(v)(I)(*3*) of this chapter, being placed by that third party;

(F) Revenue generated from the third party's activities related to the placement, or facilitating the placement, of deposits, with respect to the particular business line;

(G) Revenue generated from the third party's activities not related to the placement, or facilitating the placement, of deposits, with respect to the particular business line;

(H) A description of the marketing activities provided by the third party, with respect to the particular business line;

(I) The reasons the third party meets the primary purpose exception;

(J) Any other information the applicant deems relevant; and

(K) Any other information that the FDIC requires to initiate its review and render the application complete.

(iii) *Additional information for applications.* The FDIC may request additional information from the applicant at any time during processing of the application.

(iv) *Application timing.* (A) An applicant that submits a complete application under this section will receive a written determination by the FDIC within 120 days of receipt of a complete application.

(B) If an application is submitted that is not complete, the FDIC will, within 45 days of submission, notify the applicant and explain what is needed to render the application complete.

(C) The FDIC may extend the 120-day timeframe, if necessary, to complete its review of a complete application, with notice to the applicant, for a maximum of 120 additional days.

(v) *Application approvals.* The FDIC will approve an application—

(A) Submitted under paragraph (b)(4)(i) of this section if the FDIC finds that the third party's marketing materials indicate that the primary purpose of placing customer deposits at insured depository institutions is to enable transactions, and:

(*1*) Nominal interest, fees, or other remuneration is being paid on any customer accounts, or

(*2*) The third party's customers make, on average, more than 6 transactions a month.

(B) Submitted under paragraph (b)(4)(ii) of this section if the FDIC finds that the applicant demonstrates that, with respect to the particular business line under which the third party places or facilitates the placement of deposits, the primary purpose of the third party's business relationship with its customers is a purpose other than the placement or facilitation of the placement of deposits.

(vi) *Ongoing reporting for applications.* (A) The FDIC will describe any reporting requirements, if applicable, as part of its written approval for a primary purpose exception.

(B) Applicants that receive a written approval for the primary purpose exception, shall provide reporting to the FDIC and, in the case of an insured depository institution, to its primary Federal regulator, if required under this section.

(vii) *Requesting additional information, requiring re-application, imposing additional conditions, and withdrawing approvals.* At any time after approval of an application for the primary purpose exception, the FDIC may at its discretion, with written notice and adequate justification:

(A) Require additional information from an applicant to ensure that the approval is still appropriate, or for purposes of verifying the accuracy and correctness of the information provided to an insured depository institution or submitted to the FDIC as part of the application under this section;

(B) Require the applicant to reapply for approval;

(C) Impose additional conditions on an approval; or

(D) Withdraw an approval.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 3. The authority for 12 CFR part 337 continues to read:

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1),1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.4.

■ 4. Amend § 337.6 by:
■ a. Revising paragraphs (a) introductory text, (a)(3)(i) through (iii), and (a)(5)(i);
■ b. Redesignating paragraphs (a)(5)(ii) and (iii) as paragraphs (a)(5)(v) and (vi);
■ c. Adding new paragraphs (a)(5)(ii) and (iii) and paragraph (a)(5)(iv);
■ d. Revising newly redesignated paragraphs (a)(5)(v)(I) and (a)(5)(vi);
■ e. Removing paragraphs (b)(2)(ii) and (b)(3)(ii);
■ f. Redesignating paragraphs (b)(2)(i) and (b)(3)(i) as paragraphs (b)(2) and (3), respectively;
■ g. Adding paragraph (b)(4); and
■ h. Removing paragraph (f).

The revisions and additions read as follows:

§ 337.6 Brokered deposits.

(a) *Definitions.* For the purposes of §§ 337.6 and 337.7, the following definitions apply:

* * * * *

(3) * * *

(i) For purposes of section 29 of the Federal Deposit Insurance Act, this section and § 337.7, the terms well capitalized, adequately capitalized, and undercapitalized,[11] shall have the same meaning as to each insured depository institution as provided under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate federal banking agency for that institution.[12]

(ii) If the appropriate federal banking agency reclassifies a well-capitalized insured depository institution as adequately capitalized pursuant to section 38 of the Federal Deposit Insurance Act, the institution so reclassified shall be subject to the provisions applicable to such lower capital category under this section and § 337.7.

(iii) An insured depository institution shall be deemed to be within a given capital category for purposes of this section and § 337.7 as of the date the institution is notified of, or is deemed to have notice of, its capital category, under regulations implementing section 38 of the Federal Deposit Insurance Act issued by the appropriate federal banking agency for that institution.

* * * * *

(5) * * *

(i) The term deposit broker means:

(A) Any person engaged in the business of placing deposits of third parties with insured depository institutions;

(B) Any person engaged in the business of facilitating the placement of deposits of third parties with insured depository institutions;

(C) Any person engaged in the business of placing deposits with insured depository institutions for the purpose of selling those deposits or interests in those deposits to third parties; and

(D) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(ii) *Engaged in the business of placing deposits.* A person is engaged in the business of placing deposits of third parties if that person receives third party funds and deposits those funds at more than one insured depository institution.

(iii) *Engaged in the business of facilitating the placement of deposits.* A person is engaged in the business of facilitating the placement of deposits of third parties with insured depository institutions, by, while engaged in business, with respect to deposits

placed at more than one insured depository institution, engaging in one or more of the following activities:

(A) The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;

(B) The person is involved in negotiating or setting rates, fees, terms, or conditions for the deposit account; or

(C) The person engages in matchmaking activities.

(*1*) A person is engaged in matchmaking activities if the person proposes deposit allocations at, or between, more than one bank based upon both the particular deposit objectives of a specific depositor or depositor's agent, and the particular deposit objectives of specific banks, except in the case of deposits placed by a depositor's agent with a bank affiliated with the depositor's agent. A proposed deposit allocation is based on the particular objectives of:

(*i*) A depositor or depositor's agent when the person has access to specific financial information of the depositor or depositor's agent and the proposed deposit allocation is based upon such information; and

(*ii*) A bank when the person has access to the target deposit-balance objectives of specific banks and the proposed deposit allocation is based upon such information.

(*2*) *Anti-evasion.* Any attempt by a person to structure a deposit placement arrangement in a way that evades meeting the matchmaking definition in this section, while still playing an ongoing role in providing any function related to matchmaking may, upon a finding by and with written notice from the FDIC, result in the person meeting the matchmaking definition.

(iv) *Engaged in the business*—A person is engaged in the business of placing, or facilitating the placement of, deposits as described in paragraph (a)(5)(ii) or (iii) of this section, respectively, when that person has a business relationship with third parties, and as part of that relationship, places, or facilitates the placement of, deposits with insured depository institutions on behalf of the third parties.

(v) * * *

(I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions; or

(*1*) *Designated business exceptions that meet the primary purpose exception.* Business relationships are designated as meeting the primary purpose exception, subject to § 303.243(b)(3) of this chapter, where, with respect to a particular business line:

(*i*) Less than 25 percent of the total assets that the agent or nominee has under administration for its customers is placed at depository institutions;

(*ii*) 100 percent of depositors' funds that the agent or nominee places, or assists in placing, at depository institutions are placed into transactional accounts that do not pay any fees, interest, or other remuneration to the depositor;

(*iii*) A property management firm places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing property management services;

(*iv*) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing cross-border clearing services to its customers;

(*v*) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of providing mortgage servicing;

(*vi*) A title company places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating real estate transactions;

(*vii*) A qualified intermediary places, or assists in placing, customer funds into deposit accounts for the primary purpose of facilitating exchanges of properties under section 1031 of the Internal Revenue Code;

(*viii*) A broker dealer or futures commission merchant places, or assists in placing, customer funds into deposit accounts in compliance with 17 CFR 240.15c3–3(e) or 17 CFR 1.20(a);

(*ix*) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of posting collateral for customers to secure credit-card loans;

(*x*) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of paying for or reimbursing qualified medical expenses under section 223 of the Internal Revenue Code;

(*xi*) The agent or nominee places, or assists in placing, customer funds into deposit accounts for the primary purpose of investing in qualified tuition programs under section 529 of the Internal Revenue Code;

(*xii*) The agent or nominee places, or assists in placing, customer funds into deposit accounts to enable participation in the following tax-advantaged programs: Individual retirement accounts under section 408(a) of the Internal Revenue Code, Simple individual retirement accounts under section 408(p) of the Internal Revenue Code, or Roth individual retirement accounts under section 408A of the Internal Revenue Code;

(*xiii*) A Federal, State, or local agency places, or assists in placing, customer funds into deposit accounts to deliver funds to the beneficiaries of government programs; and

(*xiv*) The agent or nominee places, or assists in placing, customer funds into deposit accounts pursuant to such other relationships as the FDIC specifically identifies as a designated business relationship that meets the primary purpose exception.

(*2*) *Approval required for business relationships not designated in paragraph* (a)(5)(v)(I)(*1*). An agent or nominee that does not rely on a designated business exception described in this section must receive an approval under the application process in § 303.243(b) of this chapter in order to qualify for the primary purpose exception.

(*3*) *Brokered CD placements not eligible for primary purpose exception.* An agent's or nominee's placement of brokered certificates of deposit as described in 12 U.S.C. 1831f(g)(1)(A) shall be considered a discrete and independent business line from other deposit placement businesses in which the agent or nominee may be engaged.

(*4*) *Brokered CD* means a deposit placement arrangement in which a master certificate of deposit is issued by an insured depository institution in the name of the third party that has organized the funding of the certificate of deposit, or in the name of a custodian or a sub-custodian of the third party, and the certificate is funded by individual investors through the third party, with each individual investor receiving an ownership interest in the certificate of deposit, or a similar deposit placement arrangement that the FDIC determines is arranged for a similar purpose.

(vi) Notwithstanding paragraph (a)(5)(v) of this section, the term *deposit broker* includes any insured depository institution that is not well-capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

* * * * *

(b) * * *

(4) *Acceptance of nonmaturity brokered deposits.* (i) A nonmaturity

brokered deposit is accepted by an institution that is less than well capitalized—

(A) At the time a new nonmaturity account is opened by or through any deposit broker; or

(B) In the case of an existing nonmaturity brokered account, or accounts, that had been opened by or through a particular deposit broker:

(*1*) When the aggregate account balance increases above the amount(s) in the account(s) at the time the institution falls to adequately capitalized; or,

(*2*) For agency or nominee accounts, when funds for a new depositor are credited to the nonmaturity account or accounts.

* * * * *

■ 5. Add § 337.7 to read as follows:

§ 337.7 Interest rate restrictions.

(a) *Definitions*—(1) *National rate.* The weighted average of rates paid by all insured depository institutions and credit unions on a given deposit product, for which data are available, where the weights are each institution's market share of domestic deposits.

(2) *National rate cap.* The higher of:

(i) National rate plus 75 basis points, or

(ii) 120 percent of the current yield on similar maturity U.S. Treasury obligations plus 75 basis points or, in the case of any nonmaturity deposit, the federal funds rate plus 75 basis points.

(3) *Local market rate cap.* Ninety (90) percent of the highest interest rate paid on a particular deposit product in the institution's local market area. An institution's local market rate cap shall be based upon the rate offered on a particular product type and maturity period by an insured depository institution or credit union that is accepting deposits at a physical location within the institution's local market area.

(4) *Local market area.* An institution's local market area is any readily defined geographical market area in which the insured depository institution accepts or solicits deposits, which may include the State, county or metropolitan statistical area, in which the insured depository institution accepts or solicits deposits.

(5) *On-tenor and off-tenor maturities.* On-tenor maturities include the following term periods: 1-month, 3-months, 6-months, 12-months, 24-months, 36-months, 48-months, and 60-months. All other term periods are considered off-tenor maturities for purposes of this section.

(b) *Computation and publication of national rate cap*—(1) *Computation.* The Corporation will compute the national rate cap for different deposit products and maturities, as determined by the Corporation based on available and reported data.

(2) *Publication.* The Corporation will publish the national rate cap monthly, but reserves the discretion to publish more or less frequently, if needed, on the Corporation's website. Except as provided in paragraph (f) of this section, for institutions that are less than well capitalized at the time of publication, a national rate cap that is lower than the previously published national rate cap will take effect 3 days after publication. The previously published national rate cap will remain in effect during this 3-day period.

(c) *Application*—(1) *Well-capitalized institutions.* A well-capitalized institution may pay interest without restriction by this section.

(2) *Institutions that are not well capitalized.* An institution that is not well capitalized may not: Solicit deposits by offering a rate of interest that exceeds the applicable rate cap; or, where an institution has accepted brokered deposits pursuant to a waiver described in § 337.6(c), pay a rate of interest that, at the time such deposit is accepted, exceeds the applicable rate cap. For purposes of this section, the applicable rate cap is the national rate cap or, if the institution has provided the notice and evidence described in subsection (d) of this section, the local market rate cap for deposits gathered in the institution's local market area. If an institution gathers deposits from more than one local area, it may seek to pay a rate of interest up to its local market rate cap for deposits gathered in each respective local market area.

(d) *Notice related to local market rate cap applicability.* An insured depository institution that seeks to pay a rate of interest up to its local market rate cap shall provide notice and evidence of the highest rate paid on a particular deposit product in the institution's local market area to the appropriate FDIC regional director. The institution shall update its evidence and calculations for existing and new accounts monthly unless otherwise instructed by the appropriate FDIC regional director, and retain such information available for at least the two most recent examination cycles and, upon the FDIC's request, provide the documentation to the appropriate FDIC regional office and to examination staff during any subsequent examinations.

(e) *Offering products with off-tenor maturities.* If an institution seeks to offer a product with an off-tenor maturity for which the FDIC does not publish the national rate cap or that is not offered by another institution within its local market area, then the institution will be required to use the rate offered on the next lower on-tenor maturity for that product when determining its applicable national or local rate cap, respectively. For example, an institution seeking to offer a 26-month certificate of deposit must use the rate offered for a 24-month certificate of deposit to determine the institution's applicable national or local rate cap. There is no off-tenor maturity for nonmaturity products such as an interest checking account, savings account, or money market deposit account.

(f) *Discretion to delay effect of published national rate cap.* In the event of a substantial decrease in the published national rate cap from one month to the next, the Corporation may, in its discretion, delay the date on which the published national rate cap takes effect. The previously published national rate cap will remain in effect until the effective date, as determined by the Corporation, of the subsequent published national rate cap.

(g) *Treatment of nonmaturity deposits for purposes of this section.* For purposes of this section, the following definitions apply.

(1) *Solicitation of nonmaturity deposits.* (i) An institution solicits a nonmaturity deposit when—

(A) A nonmaturity account is opened;

(B) The institution raises the rate being paid on a nonmaturity account existing at the time when the institution was last well capitalized; or,

(C) Funds for a new depositor are credited to a nonmaturity account existing at the time when the institution was last well capitalized.

(2) *Acceptance of nonmaturity brokered deposits subject to a waiver.* A less than well capitalized institution that accepts nonmaturity brokered deposits subject to waiver, with respect to a particular deposit broker, may not pay interest in excess of the applicable rate cap on:

(i) Any new nonmaturity accounts opened by or through that particular deposit broker;

(ii) An amount of funds that exceeds the amount(s) in the account(s) that, at the time the institution fell to less than well capitalized, had been opened by or through the particular deposit broker; or

(iii) For agency or nominee accounts, any funds for a new depositor credited to a nonmaturity account or accounts.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 15, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–28196 Filed 1–21–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL REGISTER

Vol. 86 Friday,
No. 13 January 22, 2021

Part III

The President

Proclamation 10136—National Sanctity of Human Life Day, 2021
Proclamation 10137—National School Choice Week, 2021
Proclamation 10138—Terminating Suspensions of Entry Into the United States of Aliens Who Have Been Physically Present in the Schengen Area, the United Kingdom, the Republic of Ireland, and the Federative Republic of Brazil
Executive Order 13977—Protecting Law Enforcement Officers, Judges, Prosecutors, and Their Families

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 10136 of January 17, 2021

National Sanctity of Human Life Day, 2021

By the President of the United States of America

A Proclamation

Every human life is a gift to the world. Whether born or unborn, young or old, healthy or sick, every person is made in the holy image of God. The Almighty Creator gives unique talents, beautiful dreams, and a great purpose to every person. On National Sanctity of Human Life Day, we celebrate the wonder of human existence and renew our resolve to build a culture of life where every person of every age is protected, valued, and cherished.

This month, we mark nearly 50 years since the United States Supreme Court's *Roe* v. *Wade* decision. This constitutionally flawed ruling overturned State laws that banned abortion, and has resulted in the loss of more than 50 million innocent lives. But strong mothers, courageous students, and incredible community members and people of faith are leading a powerful movement to awaken America's conscience and restore the belief that every life is worthy of respect, protection, and care. Because of the devotion of countless pro-life pioneers, the call for every person to recognize the sanctity of life is resounding more loudly in America than ever before. Over the last decade, the rate of abortions has steadily decreased, and today, more than three out of every four Americans support restrictions on abortion.

Since my first day in office, I have taken historic action to protect innocent lives at home and abroad. I reinstituted and strengthened President Ronald Reagan's Mexico City Policy, issued a landmark pro-life rule to govern the use of Title Ten taxpayer funding, and took action to protect the conscience rights of doctors, nurses, and organizations like the Little Sisters of the Poor. My Administration has protected the vital role of faith-based adoption. At the United Nations, I made clear that global bureaucrats have no business attacking the sovereignty of nations that protect innocent life. Just a few months ago, our Nation also joined 32 other countries in signing the Geneva Consensus Declaration, which bolsters global efforts to provide better healthcare to women, protect all human life, and strengthen families.

As a Nation, restoring a culture of respect for the sacredness of life is fundamental to solving our country's most pressing problems. When each person is treated as a beloved child of God, individuals can reach their full potential, communities will flourish, and America will be a place of even greater hope and freedom. That is why it was my profound privilege to be the first President in history to attend the March for Life, and it is what motives my actions to improve our Nation's adoption and foster care system, secure more funding for Down syndrome research, and expand health services for single mothers. Over the past 4 years, I have appointed more than 200 Federal judges who apply the Constitution as written, including three Supreme Court Justices—Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. I also increased the child tax credit, so that mothers are financially supported as they take on the noble task of raising strong and healthy children. And, recently, I signed an Executive Order on Protecting Vulnerable Newborn and Infant Children, which defends the truth that every

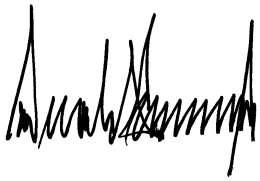
newborn baby has the same rights as all other individuals to receive life-saving care.

The United States is a shining example of human rights for the world. However, some in Washington are fighting to keep the United States among a small handful of nations—including North Korea and China—that allow elective abortions after 20 weeks. I join with countless others who believe this is morally and fundamentally wrong, and today, I renew my call on the Congress to pass legislation prohibiting late-term abortion.

Since the beginning, my Administration has been dedicated to lifting up every American, and that starts with protecting the rights of the most vulnerable in our society—the unborn. On National Sanctity of Human Life Day, we promise to continue speaking out for those who have no voice. We vow to celebrate and support every heroic mother who chooses life. And we resolve to defend the lives of every innocent and unborn child, each of whom can bring unbelievable love, joy, beauty, and grace into our Nation and the entire world.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 22, 2021, as National Sanctity of Human Life Day. Today, I call on the Congress to join me in protecting and defending the dignity of every human life, including those not yet born. I call on the American people to continue to care for women in unexpected pregnancies and to support adoption and foster care in a more meaningful way, so every child can have a loving home. And finally, I ask every citizen of this great Nation to listen to the sound of silence caused by a generation lost to us, and then to raise their voices for all affected by abortion, both seen and unseen.

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



[FR Doc. 2021–01610
Filed 1–21–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Proclamation 10137 of January 17, 2021

National School Choice Week, 2021

By the President of the United States of America

A Proclamation

As we mark National School Choice Week, my Administration reaffirms its commitment to solving the civil rights issue of our time: educational inequity. We have made substantial progress on this front, but we must continue our efforts to ensure that each and every family in America has the freedom to choose an education that best meets their needs and values.

Our Nation currently spends more money per pupil than almost every other industrialized country in the world, yet nearly two-thirds of our youth are not proficient readers, and students across all age groups continue to struggle in math. These failures are largely the result of a one-size-fits-all, industrial-style approach to education. Currently, students are assigned to schools based on where they live, so only those whose families can afford to move to a better-performing school district or can afford private school tuition have a choice in the learning environment that best fits their child's needs. That is fundamentally unfair and unjust. All Americans, no matter their family income, deserve the opportunity to choose the best educational option for them.

What is often forgotten is that the failures of this rigid arrangement disproportionately affect racial minorities and distressed communities, perpetuating a cycle of poverty. We can no longer allow America's classrooms to be an exception to our Nation's promise of equal opportunity for all. Instead, we must provide equal access to a quality education for every American student, no matter where they reside. In the land of the free, a child's zip code should never determine their future.

That is why, I recently issued an Executive Order on Expanding Educational Opportunity through School Choice that provides in-person options for low-income parents forced to send their children to virtual school during the pandemic. But we must continue this progress. Therefore, I renew my call to the Congress to pass the Education Freedom Scholarships and Opportunity Act, so we can finally take a giant step towards true liberty for students. This landmark legislation would give more than 1 million children the freedom to attend the school that best fits their needs, and would create more than $5 billion in annual tax credits for those who donate to local scholarship funds, empowering more families to choose the best educational setting for their children.

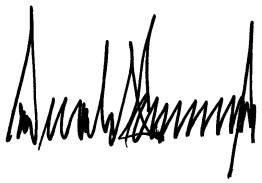
I also call on the Congress to pass the School Choice Now Act, which will ensure every State can fund elementary and high school scholarship programs, so that students do not lose access to their school of choice because of economic disruptions. As too many school districts across the country refuse to open, these scholarships are needed now more than ever so that families unable to afford private tutors or who work during the day can still provide an education for their children.

Education will always be one of the most important factors in a child's future success. That is why I am fighting to empower all families—of all races, backgrounds, and incomes—with the freedom and the resources they need to make the best decisions for their children. In America, more freedom leads to more opportunity—especially in the classroom. By embracing my

Administration's school choice policy, we will make sure that every American student is able to fulfill their God-given potential.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 24 to January 30, 2021, as National School Choice Week.

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



[FR Doc. 2021–01633
Filed 1–21–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Proclamation 10138 of January 18, 2021

Terminating Suspensions of Entry Into the United States of Aliens Who Have Been Physically Present in the Schengen Area, the United Kingdom, the Republic of Ireland, and the Federative Republic of Brazil

By the President of the United States of America

A Proclamation

In the wake of the unprecedented outbreak of COVID–19 in the United States, I took action to suspend and limit the entry of aliens recently present in certain foreign jurisdictions where significant COVID–19 outbreaks had occurred. These jurisdictions included the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau), the Islamic Republic of Iran, the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, and the Federative Republic of Brazil.

Understanding that the nature of the threat posed by COVID–19 would evolve over time, I directed the Secretary of Health and Human Services to make recommendations to me regarding whether to continue, modify, or terminate the restrictions that I had previously imposed. On January 12, 2021, the Centers for Disease Control and Prevention (CDC) issued an order, effective January 26, 2021, requiring proof of a negative COVID–19 test or documentation of having recovered from COVID–19 for all air passengers arriving from a foreign country to the United States. The Secretary has explained that this action will help to prevent air passengers from the Schengen Area, the United Kingdom, the Republic of Ireland, and the Federative Republic of Brazil from spreading the virus that causes COVID–19 into the United States, as it is the Secretary's understanding that the vast majority of persons entering the United States from these jurisdictions do so by air.

Moreover, the Secretary expects cooperation from those jurisdictions in implementing the testing order. Public health officials in the jurisdictions have a proven record of working with the United States to share accurate and timely COVID–19 testing and trend data, and the United States has active collaborations with the jurisdictions regarding how to make travel safe between our respective countries. As a result of that record, the Secretary reports high confidence that these jurisdictions will cooperate with the United States in the implementation of CDC's January 12, 2021, order and that tests administered there will yield accurate results.

This cooperation stands in stark contrast to the behavior of the governments and state-owned enterprises of the People's Republic of China and the Islamic Republic of Iran, which repeatedly have failed to cooperate with the United States public health authorities and to share timely, accurate information about the spread of the virus. Those jurisdictions' responses to the pandemic, their lack of transparency, and their lack of cooperation with the United States thus far in combatting the pandemic, cast doubt on their cooperation in implementing CDC's January 12, 2021, order.

Accordingly, the Secretary has advised me to remove the restrictions applicable to the Schengen Area, the United Kingdom, the Republic of Ireland, and the Federative Republic of Brazil, while leaving in place the restrictions

applicable to the People's Republic of China and the Islamic Republic of Iran. I agree with the Secretary that this action is the best way to continue protecting Americans from COVID–19 while enabling travel to resume safely.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(f) and 1185(a), hereby find that the unrestricted entry into the United States of persons who have been physically present in the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, and the Federative Republic of Brazil is no longer detrimental to the interests of the United States and find that it is in the interest of the United States to terminate the suspension of entry into the United States of persons who have been physically present in those jurisdictions. Accordingly, I hereby proclaim:

Section 1. *Terminations.* Proclamation 9993 of March 11, 2020 (Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus), Proclamation 9996 of March 14, 2020 (Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus), and Proclamation 10041 of May 24, 2020 (Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus), are hereby terminated effective at 12:01 a.m. eastern standard time on January 26, 2021.

Sec. 2. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

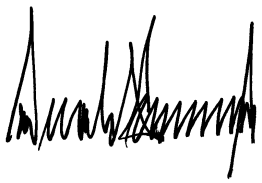
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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



[FR Doc. 2021–01634
Filed 1–21–21; 11:15 am]
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Presidential Documents

Executive Order 13977 of January 18, 2021

Protecting Law Enforcement Officers, Judges, Prosecutors, and Their Families

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* Under the Constitution and Federal law, our Government vests in judges, prosecutors, and law enforcement officers the power to make decisions of enormous consequence. Because of the importance of their work, these public servants face unique risks to their safety and the safety of their families. Some who face or have received an adverse judicial decision have sought to intimidate or punish judges and prosecutors with threats of harm. Moreover, judges, prosecutors, and law enforcement officers are symbols within our communities of law and order and may be targeted for that reason alone. And at times, family members of public servants have become victims. Last year, a former litigant before a Federal judge in New Jersey tragically murdered the judge's 20-year-old son and critically wounded her husband. Judges, prosecutors, and law enforcement officers' resiliency in the face of the danger they regularly face is an inspiration for all of us in public service.

Judges, prosecutors, and law enforcement officers should not have to choose between public service and subjecting themselves and their families to danger. My Administration has no higher priorities than preserving the rule of law in our country and protecting the men and women who serve under its flag. Accordingly, I am ordering enhanced protections for judges, prosecutors, and law enforcement officers. Federal law already allows Federal and State law enforcement officers to protect themselves by carrying a concealed firearm, but the Federal Government can do more to cut the red tape that Federal law enforcement officers must navigate to exercise their right. The current threat to Federal prosecutors also demands an expansion of their ability to carry a concealed firearm, as allowed under the Department of Justice's existing authorities. Finally, the Congress should act expeditiously to adopt legislation extending the right to carry a concealed firearm to Federal judges and pass other measures that will expand our capacity to combat threats of violence against judges, prosecutors, and law enforcement officers.

Sec. 2. *Removing Obstacles to Federal Law Enforcement Officers Qualifying For Concealed Carry Under the Law Enforcement Officers Safety Act of 2004.* (a) It shall be the policy of the United States to remove any undue obstacle preventing current or retired Federal law enforcement officers from carrying a concealed firearm as allowed under the Law Enforcement Officers Safety Act of 2004, as amended (18 U.S.C. 926B, 926C) (LEOSA).

(b) The heads of all executive departments and agencies (agencies) that employ or have employed qualified law enforcement officers or qualified retired law enforcement officers, as those terms are defined in the LEOSA, shall act expeditiously to implement the policy set by subsection (a) of this section.

(c) The heads of all agencies that employ or have employed qualified law enforcement officers or qualified retired law enforcement officers, as those terms are defined in the LEOSA, shall submit a report to the President, through the Assistant to the President for Domestic Policy, within 30 days of the date of this order, reporting on the implementation of this order

and analyzing qualified persons' ability to carry a concealed firearm under the LEOSA.

(d) The report required by subsection (c) of this section shall:

(i) identify any obstacles that the agency's qualified law enforcement officers or qualified retired law enforcement officers presently face in carrying a concealed firearm under the LEOSA;

(ii) identify any categories of the agency's qualified law enforcement officers or qualified retired law enforcement officers who are presently unable to carry a concealed firearm under the LEOSA;

(iii) identify the steps the agency has taken to implement the policy set by subsection (a) of this section; and

(iv) identify the steps the agency plans to take in the future to implement the policy set by subsection (a) and explain why it was not possible to take these steps before the report was submitted.

Sec. 3. *Authorizing Concealed Carry By Federal Prosecutors.* (a) Within 30 days of the date of this order, the Attorney General shall propose a regulation revising section 0.112 of title 28, Code of Federal Regulations, to provide that the special deputation as a Deputy United States Marshal shall be granted upon request to any Federal prosecutor when the Federal prosecutor or his or her family members face risk of harm as a result of the Federal prosecutor's government service and as appropriate.

(b) The regulation proposed pursuant to this section shall:

(i) include with the special deputation the power to possess and carry firearms but not include law enforcement powers such as the power to make arrests for violations of Federal law and the court-related duties of United States Marshals; and

(ii) require appropriate training in firearm safety and use as a condition to any special deputation.

(c) Within 30 days of the date of this order, the Attorney General shall revise other Department policies to permit special deputation consistent with subsections (a) and (b) of this section to the extent consistent with applicable law.

Sec. 4. *Expanding the Federal Government's Protection of Judges, Prosecutors, and Law Enforcement Officers.* (a) The Attorney General shall direct the Director of the Marshals Service to prioritize the protection of Federal judges and Federal prosecutors.

(b) The Attorney General shall prioritize the investigation and prosecution of Federal crimes involving actual or threatened violence against judges, prosecutors, or law enforcement officers or their family members, if the family member was targeted because of that person's relation to a judge, prosecutor, or law enforcement officer.

(c) The Attorney General and Secretary of Homeland Security shall coordinate a review within the executive branch to assess the feasibility, as appropriate and consistent with applicable law, of facilitating the removal of, or minimizing the availability of, personally identifiable information appearing in public sources of judges, prosecutors, and law enforcement officers employed by the Federal Government, and shall use the results of this review to inform such persons of related security vulnerabilities.

(d) Within 30 days of the date of this order, the Attorney General shall assess the need to revise subsection 0.111(e) of title 28, Code of Federal Regulations, to protect Federal prosecutors. If any revision is needed, the Attorney General shall take immediate steps to issue a proposed rule that would amend section 0.111(e) accordingly.

(e) The heads of all agencies shall examine the extent to which they collect personally identifiable information from judges, prosecutors, or law enforcement officers, and as appropriate and consistent with applicable law, allow such persons to provide a Post Office box address in lieu of home address information.

Sec. 5. *Proposing Legislation to Enhance the Protection of Judges, Prosecutors, and Law Enforcement Officers.* (a) Within 30 days of the date of this order, the Attorney General shall develop and propose Federal legislation providing additional protection for judges, prosecutors, and law enforcement officers.

(b) The proposed legislation described in subsection (a) of this section shall:

(i) authorize current and former Federal judges and current and former Federal prosecutors to possess or carry firearms when they or their family members face risk of harm as a result of their Federal government service, irrespective of Federal, State, and local laws which may restrict the possession or carrying of firearms;

(ii) promote the removal and minimization of personally identifiable information from public websites and records of current and former judges, prosecutors, and law enforcement officers, as appropriate and as allowed under the Constitution;

(iii) expand the ability of judges, prosecutors, and law enforcement officers to use Post Office box addresses in lieu of home address information;

(iv) authorize additional appropriations and authority for the Department of Homeland Security, Marshals Service, and Federal Bureau of Investigation, including appropriations to hire and train additional personnel and authority for agencies to respond to both civil unrest and threats to Federal courthouses;

(v) increase penalties for threatened and actual violence against Federal judges, prosecutors, and law enforcement officers and their families, including providing that violence against a Federal judge, prosecutor, or law enforcement officer's family member shall be punished as though the act was committed against the Federal judge, prosecutor, or law enforcement officer if the family member was targeted because of that person's relation to a Federal judge, prosecutor, or law enforcement officer;

(vi) prevent State and local governments from obstructing the ability of qualified law enforcement officers and qualified retired law enforcement officers, as those terms are defined by the LEOSA, from carrying a concealed firearm pursuant to the LEOSA, including by refusing to issue identification documents; and

(vii) propose other amendments to strengthen the LEOSA, if appropriate.

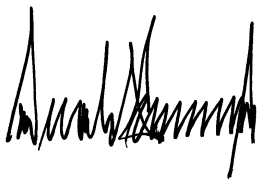
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 18, 2021.

[FR Doc. 2021–01635
Filed 1–21–21; 11:15 am]
Billing code 3295–F1–P

FEDERAL REGISTER

Vol. 86 Friday,
No. 13 January 22, 2021

Part IV

The President

Executive Order 13978—Building the National Garden of American Heroes
Executive Order 13979—Ensuring Democratic Accountability in Agency Rulemaking
Executive Order 13980—Protecting Americans From Overcriminalization Through Regulatory Reform
Executive Order 13981—Protecting the United States From Certain Unmanned Aircraft Systems

Federal Register
Vol. 86, No. 13
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Title 3—

The President

Executive Order 13978 of January 18, 2021

Building the National Garden of American Heroes

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Background.* In Executive Order 13934 of July 3, 2020 (Building and Rebuilding Monuments to American Heroes), I made it the policy of the United States to establish a statuary park named the National Garden of American Heroes (National Garden). To begin the process of building this new monument to our country's greatness, I established the Interagency Task Force for Building and Rebuilding Monuments to American Heroes (Task Force) and directed its members to plan for construction of the National Garden. The Task Force has advised me it has completed the first phase of its work and is prepared to move forward. This order revises Executive Order 13934 and provides additional direction for the Task Force.

Sec. 2. *Purpose.* The chronicles of our history show that America is a land of heroes. As I announced during my address at Mount Rushmore, the gates of a beautiful new garden will soon open to the public where the legends of America's past will be remembered.

The National Garden will be built to reflect the awesome splendor of our country's timeless exceptionalism. It will be a place where citizens, young and old, can renew their vision of greatness and take up the challenge that I gave every American in my first address to Congress, to ''[b]elieve in yourselves, believe in your future, and believe, once more, in America.''

Across this Nation, belief in the greatness and goodness of America has come under attack in recent months and years by a dangerous anti-American extremism that seeks to dismantle our country's history, institutions, and very identity. The heroes of 1776 have been desecrated, with statues of George Washington, Thomas Jefferson, and Benjamin Franklin vandalized and toppled. The dead who gave their lives to end slavery and save the Union during the Civil War have been dishonored, with monuments to Abraham Lincoln, Hans Christian Heg, and the courageous 54th Regiment left damaged and disfigured. The brave warriors who saved freedom from Nazi fascism have been disgraced with a memorial to World War II veterans defaced with the hammer and sickle of Soviet communism.

The National Garden is America's answer to this reckless attempt to erase our heroes, values, and entire way of life. On its grounds, the devastation and discord of the moment will be overcome with abiding love of country and lasting patriotism. This is the American way. When the forces of anti-Americanism have sought to burn, tear down, and destroy, patriots have built, rebuilt, and lifted up. That is our history. America responded to the razing of the White House by building it back in the same place with unbroken resolve, to the murders of Abraham Lincoln and Martin Luther King, Jr., with a national temple and the Stone of Hope, and to the terrorism of 9/11 with a new Freedom Tower. In keeping with this tradition, America is responding to the tragic toppling of monuments to our founding generation and the giants of our past by commencing a new national project for their restoration, veneration, and celebration.

The National Garden will draw together and fix in the soil of a single place what Abraham Lincoln called ''[t]he mystic chords of memory, stretching from every battlefield, and patriot grave, to every living heart.'' In the peace and harmony of this vast outdoor park, visitors will come and learn

the amazing stories of some of the greatest Americans who have ever lived. The National Garden will feature a roll call of heroes who deserve honor, recognition, and lasting tribute because of the battles they won, the ideas they championed, the diseases they cured, the lives they saved, the heights they achieved, and the hope they passed down to all of us—that united as one American people trusting in God, there is no challenge that cannot be overcome and no dream that is beyond our reach.

In short, each individual has been chosen for embodying the American spirit of daring and defiance, excellence and adventure, courage and confidence, loyalty and love. Astounding the world by the sheer power of their example, each one of them has contributed indispensably to America's noble history, the best chapters of which are still to come.

Sec. 3. *Honoring Additional American Heroes.* (a) Section 3(c) of Executive Order 13934 is amended by striking the words ''In addition to the requirements of subsection 3(b) of this order, the proposed options for the'' and inserting in their place the word ''The''.

(b) Section 3(c)(i) of Executive Order 13934 is amended to read as follows: ''The National Garden should be composed of statues, including statues of Ansel Adams, John Adams, Samuel Adams, Muhammad Ali, Luis Walter Alvarez, Susan B. Anthony, Hannah Arendt, Louis Armstrong, Neil Armstrong, Crispus Attucks, John James Audubon, Lauren Bacall, Clara Barton, Todd Beamer, Alexander Graham Bell, Roy Benavidez, Ingrid Bergman, Irving Berlin, Humphrey Bogart, Daniel Boone, Norman Borlaug, William Bradford, Herb Brooks, Kobe Bryant, William F. Buckley, Jr., Sitting Bull, Frank Capra, Andrew Carnegie, Charles Carroll, John Carroll, George Washington Carver, Johnny Cash, Joshua Chamberlain, Whittaker Chambers, Johnny ''Appleseed'' Chapman, Ray Charles, Julia Child, Gordon Chung-Hoon, William Clark, Henry Clay, Samuel Clemens (Mark Twain), Roberto Clemente, Grover Cleveland, Red Cloud, William F. ''Buffalo Bill'' Cody, Nat King Cole, Samuel Colt, Christopher Columbus, Calvin Coolidge, James Fenimore Cooper, Davy Crockett, Benjamin O. Davis, Jr., Miles Davis, Dorothy Day, Joseph H. De Castro, Emily Dickinson, Walt Disney, William ''Wild Bill'' Donovan, Jimmy Doolittle, Desmond Doss, Frederick Douglass, Herbert Henry Dow, Katharine Drexel, Peter Drucker, Amelia Earhart, Thomas Edison, Jonathan Edwards, Albert Einstein, Dwight D. Eisenhower, Duke Ellington, Ralph Waldo Emerson, Medgar Evers, David Farragut, the Marquis de La Fayette, Mary Fields, Henry Ford, George Fox, Aretha Franklin, Benjamin Franklin, Milton Friedman, Robert Frost, Gabby Gabreski, Bernardo de Gálvez, Lou Gehrig, Theodor Seuss Geisel, Cass Gilbert, Ruth Bader Ginsburg, John Glenn, Barry Goldwater, Samuel Gompers, Alexander Goode, Carl Gorman, Billy Graham, Ulysses S. Grant, Nellie Gray, Nathanael Greene, Woody Guthrie, Nathan Hale, William Frederick ''Bull'' Halsey, Jr., Alexander Hamilton, Ira Hayes, Hans Christian Heg, Ernest Hemingway, Patrick Henry, Charlton Heston, Alfred Hitchcock, Billie Holiday, Bob Hope, Johns Hopkins, Grace Hopper, Sam Houston, Whitney Houston, Julia Ward Howe, Edwin Hubble, Daniel Inouye, Andrew Jackson, Robert H. Jackson, Mary Jackson, John Jay, Thomas Jefferson, Steve Jobs, Katherine Johnson, Barbara Jordan, Chief Joseph, Elia Kazan, Helen Keller, John F. Kennedy, Francis Scott Key, Coretta Scott King, Martin Luther King, Jr., Russell Kirk, Jeane Kirkpatrick, Henry Knox, Tadeusz Kościuszko, Harper Lee, Pierre Charles L'Enfant, Meriwether Lewis, Abraham Lincoln, Vince Lombardi, Henry Wadsworth Longfellow, Clare Boothe Luce, Douglas MacArthur, Dolley Madison, James Madison, George Marshall, Thurgood Marshall, William Mayo, Christa McAuliffe, William McKinley, Louise McManus, Herman Melville, Thomas Merton, George P. Mitchell, Maria Mitchell, William ''Billy'' Mitchell, Samuel Morse, Lucretia Mott, John Muir, Audie Murphy, Edward Murrow, John Neumann, Annie Oakley, Jesse Owens, Rosa Parks, George S. Patton, Jr., Charles Willson Peale, William Penn, Oliver Hazard Perry, John J. Pershing, Edgar Allan Poe, Clark Poling, John Russell Pope, Elvis Presley, Jeannette Rankin, Ronald Reagan, Walter Reed, William Rehnquist, Paul Revere, Henry Hobson Richardson, Hyman Rickover, Sally Ride, Matthew Ridgway, Jackie Robinson, Norman Rockwell,

Caesar Rodney, Eleanor Roosevelt, Franklin D. Roosevelt, Theodore Roosevelt, Betsy Ross, Babe Ruth, Sacagawea, Jonas Salk, John Singer Sargent, Antonin Scalia, Norman Schwarzkopf, Junípero Serra, Elizabeth Ann Seton, Robert Gould Shaw, Fulton Sheen, Alan Shepard, Frank Sinatra, Margaret Chase Smith, Bessie Smith, Elizabeth Cady Stanton, Jimmy Stewart, Harriet Beecher Stowe, Gilbert Stuart, Anne Sullivan, William Howard Taft, Maria Tallchief, Maxwell Taylor, Tecumseh, Kateri Tekakwitha, Shirley Temple, Nikola Tesla, Jefferson Thomas, Henry David Thoreau, Jim Thorpe, Augustus Tolton, Alex Trebek, Harry S. Truman, Sojourner Truth, Harriet Tubman, Dorothy Vaughan, C. T. Vivian, John von Neumann, Thomas Ustick Walter, Sam Walton, Booker T. Washington, George Washington, John Washington, John Wayne, Ida B. Wells-Barnett, Phillis Wheatley, Walt Whitman, Laura Ingalls Wilder, Roger Williams, John Winthrop, Frank Lloyd Wright, Orville Wright, Wilbur Wright, Alvin C. York, Cy Young, and Lorenzo de Zavala.''

Sec. 4. *Additional Amendments to Executive Order 13934.* (a) Section 3(b) of Executive Order 13934 is amended to read as follows: ''The Secretary, in consultation with the Task Force, shall identify a site suitable for the establishment of the National Garden. The Secretary shall proceed with construction of the National Garden at that site, to the extent consistent with the Secretary's existing authorities or authority later provided by the Congress.''

(b) Section 7 of Executive Order 13934 is amended to read as follows: ''Definition. The term ''historically significant American'' means an individual who made substantive contributions to America's public life or otherwise had a substantive effect on America's history.''

Sec. 5. *Funding.* (a) The Secretary of the Interior shall provide funding, as appropriate and consistent with available appropriations and applicable law, for the establishment and maintenance of the National Garden.

(b) The Chairperson of the National Endowment for the Arts and the Chairperson of the National Endowment for the Humanities, in consultation with the National Council on the Arts and the National Council on the Humanities, respectively, and the Task Force, should target spending one-twelfth of the discretionary funds available to their agencies on commissioning statues of individuals set forth in section 3(c)(i) of Executive Order 13934, as amended by section 3(b) of this order, for placement in the National Garden, as appropriate and consistent with applicable law.

Sec. 6. *Public Report.* Until such time as the National Garden is established and includes statues of all individuals set forth in section 3(c)(i) of Executive Order 13934, as amended by section 3(b) of this order, the Task Force shall publish an annual public report describing progress on establishing the National Garden and on building statues of American heroes. This report shall include, as applicable, the steps the Task Force agencies have taken in the preceding year to prepare the National Garden to be opened for public access and listing all statues either commissioned for or placed in the National Garden.

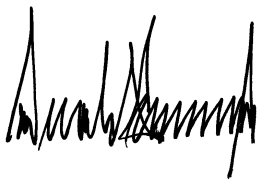
Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 18, 2021.

[FR Doc. 2021–01643
Filed 1–21–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13979 of January 18, 2021

Ensuring Democratic Accountability in Agency Rulemaking

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* American democracy operates on the principle of the consent of the governed. Regular elections for the Congress and the President and Vice President of the United States are designed to ensure that the officials responsible for making and executing the law are held accountable to the American people. The President chooses Federal agency heads who exercise executive authority and implement his regulatory agenda. The American people, in electing the President, thereby have a role in choosing the individuals who govern them.

However, some agencies have chosen to blur these lines of democratic accountability by allowing career officials to authorize, approve, and serve as the final word on regulations. This practice transfers the power to set rules governing Americans' daily lives from the President, acting through his executive subordinates, to officials insulated from the accountability that national elections bring. This practice undermines the power of the American people to choose who governs them and I am directing steps to end it.

Sec. 2. *Rulemaking by Senior Appointees.* (a) To the extent permitted by law, the head of each agency shall:

(i) require that agency rules promulgated under section 553 of title 5, United States Code (section 553), must be signed by a senior appointee; and

(ii) require that only senior appointees may initiate the rulemaking process for agency rules promulgated under section 553 or may approve the agency's regulatory agenda.

(b) Subsection (a) of this section shall not apply if the agency head:

(i) determines that compliance with this section would impede public safety or security; and

(ii) submits to the Administrator of the Office of Information and Regulatory Affairs (Administrator) within the Office of Management and Budget a notification disclosing the reasons for the exemption and publishes such notification, consistent with public safety, security, and privacy interests, in the *Federal Register*.

(c) An agency head may not delegate authority to make the determination allowed by subsection (b) of this section.

(d) The head of each agency shall ensure that the issuance of future agency rules promulgated under section 553 adheres to the requirements of this section.

Sec. 3. *Review of Existing Delegations of Rulemaking Authority.* Within 180 days of the date of this order, the head of each agency shall, to the extent permitted by law:

(a) review delegations of authority regarding rulemaking and make any revisions necessary to ensure that such delegations are consistent with section 2 of this order; and

(b) amend agency regulations governing agency management and procedure to incorporate the requirements of section 2 of this order.

Sec. 4. *Review of Existing Rules.* (a) Within 90 days of the date of this order, the head of each agency shall review all significant rules the agency has issued over the last 12 years, and any other rules identified by the Administrator, to determine whether the rule was issued by a senior appointee. For good cause shown, the Administrator may authorize an extension of the period within which an agency shall conduct such review.

(b) Within 120 days of the date of this order, the head of each agency shall provide a report to the President, through the Administrator, summarizing the findings of the review. For good cause shown, the Administrator may authorize an extension of the deadline to provide such report.

Sec. 5. *Definitions.* For the purposes of this order, the term:

(a) ''agency'' has the meaning given that term in section 3(b) of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, or any successor order; except that for purposes of this order:

(i) the term shall include the Consumer Financial Protection Bureau; and

(ii) the term shall not include the Federal Bureau of Prisons of the Department of Justice;

(b) ''senior appointee'' means an individual appointed by the President, or performing the functions and duties of an office that requires appointment by the President, or a non-career member of the Senior Executive Service (or equivalent agency system);

(c) ''significant rule'' means any rule that is also a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, as amended, or any successor order; and

(d) ''rule'' has the meaning given that term in section 551(4) of title 5, United States Code, except that such term does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Sec. 6. *Implementation.* The Administrator shall provide guidance on the implementation of this order and shall monitor agency compliance with the order.

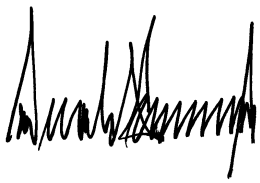
Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 18, 2021.

[FR Doc. 2021–01644
Filed 1–21–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13980 of January 18, 2021

Protecting Americans From Overcriminalization Through Regulatory Reform

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve transparency with respect to the consequences of violating certain regulations and to protect Americans from facing unwarranted criminal punishment for unintentional violations of regulations, it is hereby ordered as follows:

Section 1. *Purpose.* In the interest of fairness, Federal criminal law should be clearly written so that all Americans can understand what is prohibited and act accordingly. Some statutes have authorized executive branch agencies to promulgate thousands of regulations, creating a thicket of requirements that can be difficult to navigate, and many of these regulations are enforceable through criminal processes and penalties. The purpose of this order is to alleviate regulatory burdens on Americans by ensuring that they have notice of potential criminal liability for violations of regulations and by focusing criminal enforcement of regulatory offenses on the most culpable individuals.

Sec. 2. *Policy.* It is the policy of the Federal Government that:

(a) Agencies promulgating regulations that may subject a violator to criminal penalties should be explicit about what conduct is subject to criminal penalties and the *mens rea* standard applicable to those offenses;

(b) Strict liability offenses are ''generally disfavored.'' *United States* v. *United States Gypsum, Co.,* 438 U.S. 422, 438 (1978). Where appropriate, agencies should consider administrative or civil enforcement of strict liability regulatory offenses, rather than criminal enforcement of such offenses; and

(c) Criminal prosecution based on regulatory offenses is most appropriate for those persons who know what is prohibited or required by the regulation and choose not to comply, thereby causing or risking substantial public harm. Criminal prosecutions based on regulatory offenses should focus on matters where a putative defendant had actual or constructive knowledge that conduct was prohibited.

Sec. 3. *Definitions.* For the purposes of this order:

(a) ''Agency'' has the meaning given to ''Executive agency'' in section 105 of title 5, United States Code.

(b) ''*Mens rea*'' means the state of mind that by law must be proven to convict a particular defendant of a particular crime. There are several such mental states in the law applied by Federal courts. Two common mental states are ''knowingly'' and ''willfully.'' A defendant acts ''knowingly'' with respect to an element of the offense if he or she has knowledge of the essential facts comprising that element. In addition, a defendant ''willfully'' violates a statute if he or she acts with a ''bad purpose'' that is with ''knowledge that his [or her] conduct is unlawful.'' Model Criminal Jury Instructions (3d Cir. 2018), ch. 5, sec. 5.02 cmt. (quotation marks omitted). By contrast, strict liability offenses do not require the government to prove *mens rea.* For instance, the jury instructions for the United States Court of Appeals for the Third Circuit note that ''[s]ome federal crimes are also strict or absolute liability offenses, without any mental state requirement.'' *Id.* at ch. 5, General Introduction to Mental State Instructions.

(c) ''Person'' has the meaning given it in section 1 of title 1, United States Code.

(d) ''Regulatory offense'' means any violation of a regulation promulgated by an agency.

Sec. 4. *Promoting Regulatory Transparency.* (a) All notices of proposed rulemaking (NPRMs) and final rules published in the *Federal Register* after issuance of this order should include a statement that describes whether individuals who violate any of the prohibitions—or fail to comply with any requirements—imposed by the regulation or rule may be subject to criminal penalties. Agencies should draft this statement in consultation with the Department of Justice. For purposes of this order, a regulation is treated as subjecting individuals to criminal penalties when violation of the regulation is itself a basis for criminal liability under Federal law.

(b) The regulatory text of all NPRMs and final rules with criminal consequences published in the *Federal Register* after issuance of this order should, consistent with applicable law, explicitly state a *mens rea* requirement for each such provision or identify the provision as a strict liability offense, accompanied by citations to the relevant provisions of the authorizing statute.

(c) Prior to publishing in the *Federal Register* an NPRM or final rule that contains a regulatory offense not specifically articulated in the authorizing statute that may subject a violator to potential criminal liability with no *mens rea* requirement or a regulatory offense that includes an element that does not require proof of *mens rea* (excluding jurisdictional and venue elements), the applicable agency should submit a brief justification for use of a strict liability standard as well as the source of legal authority for the imposition of such a standard, to the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (Administrator). In response to these agency submissions, the Administrator shall provide implementation guidance to agencies on this order, monitor agency regulatory actions pursuant to this order, and advise agencies if their actions are inconsistent with the principles set forth in this order and or otherwise conflict with the policies or actions of another agency. After such consultation, a statement of justification should be published in the *Federal Register* with the NPRM and the final rule.

Sec. 5. *Agency Referrals for Potential Criminal Enforcement.* (a) Within 45 days of the date of this order, and in consultation with the Department of Justice, each agency should publish guidance in the *Federal Register* describing its plan to administratively address regulatory offenses subject to potential criminal liability rather than refer those offenses to the Department of Justice for criminal enforcement. Such guidance should make clear that when agencies are enforcing regulations related to statutory criminal violations subject to strict liability, and deciding whether to refer the matter to the Department of Justice, agencies should consider factors such as:

(i) the harm or risk of harm, pecuniary or otherwise, caused by the alleged offense;

(ii) the potential gain to the putative defendant that could result from the offense;

(iii) whether the putative defendant held specialized knowledge, expertise, or was licensed in an industry related to the rule or regulation at issue; and

(iv) evidence, if any is available, of the putative defendant's knowledge or lack thereof of the regulation at issue.

(b) Notwithstanding these considerations, the guidance should not deter, limit, or delay agency referrals to the Department of Justice where either the putative defendant's state of mind is unknown because further investigation is required, or there exists a reasonable indication that a crime has been committed based on the evidence available.

(c) When required by internal agency policies or practice, an agency may refer alleged regulatory offenses carrying potential criminal consequences to its designated investigation and law enforcement offices for

investigation of the viability of the charge, subject to the guidance described in 5(a) of this order governing referral of regulatory offenses subject to strict liability.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Notwithstanding any other provision in this order, nothing in this order shall apply:

(i) to any action that pertains to foreign or military affairs, or to a national security or homeland security function of the United States (other than procurement actions and actions involving the import or export of non-defense articles and services);

(ii) to any action that the Department of Justice takes related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related investigation by the Department of Justice, in addition to any action related to a civil investigative demand under 18 U.S.C. 1968;

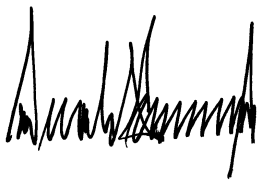
(iii) to any action related to counterfeit goods, pirated goods, or other goods that infringe intellectual property rights, or goods that are adulterated or misbranded, or goods for which regulatory approval was required prior to distribution but not obtained;

(iv) to strict liability misdemeanor prosecutions concluded via plea agreement;

(v) to any investigation of misconduct by an agency employee or any disciplinary, corrective, or employment action taken against an agency employee; or

(vi) in any other circumstance or proceeding to which application of this order, or any part of this order, would, in the judgment of the head of the agency, undermine the national security.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 18, 2021.

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Filed 1–21–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 13981 of January 18, 2021

Protecting the United States From Certain Unmanned Aircraft Systems

By the authority vested in me as President by the Constitution and the laws of the United States of America,

I, DONALD J. TRUMP, President of the United States of America, find that additional actions are necessary to ensure the security of Unmanned Aircraft Systems (UAS) owned, operated, and controlled by the Federal Government; to secure the integrity of American infrastructure, including America's National Airspace System (NAS); to protect our law enforcement and warfighters; and to maintain and expand our domestic industrial base capabilities.

Accordingly, I hereby order:

Section 1. *Policy.* UAS have tremendous potential to support public safety and national security missions and are increasingly being used by Federal, State, and local governments. UAS are used, for example, to assist law enforcement and support natural disaster relief efforts. Reliance on UAS and components manufactured by our adversaries, however, threatens our national and economic security.

United States Government operations involving UAS require accessing, collecting, and maintaining data, which could reveal sensitive information. The use of UAS and critical components manufactured and developed by foreign adversaries, or by persons under their control, may allow this sensitive information to be accessed by or transferred to foreign adversaries. Furthermore, the manufacturing of UAS involves combining several critical components, including advanced manufacturing techniques, artificial intelligence, microelectronic components, and multi-spectral sensors. The Nation's capability to produce UAS and certain critical UAS components domestically is critical for national defense and the security and strength of our defense industrial base.

It is the policy of the United States, therefore, to prevent the use of taxpayer dollars to procure UAS that present unacceptable risks and are manufactured by, or contain software or critical electronic components from, foreign adversaries, and to encourage the use of domestically produced UAS.

Sec. 2. *Reviewing Federal Government Authority to Limit Government Procurement of Covered UAS.* (a) The heads of all executive departments and agencies (agencies) shall review their respective authorities to determine whether, and to what extent consistent with applicable law, they could cease:

(i) directly procuring or indirectly procuring through a third party, such as a contractor, a covered UAS;

(ii) providing Federal financial assistance (*e.g.,* through award of a grant) that may be used to procure a covered UAS;

(iii) entering into, or renewing, a contract, order, or other commitment for the procurement of a covered UAS; or

(iv) otherwise providing Federal funding for the procurement of a covered UAS.

(b) After conducting the review described in subsection (a) of this section, the heads of all agencies shall each submit a report to the Director of

the Office of Management and Budget identifying any authority to take the actions outlined in subsections (a)(i) through (iv) of this section.

Sec. 3. *Reviewing Federal Government Use of UAS.* (a) Within 60 days of the date of this order, the heads of all agencies shall each submit a report to the Director of National Intelligence and the Director of the Office of Science and Technology Policy describing the manufacturer, model, and any relevant security protocols for all UAS currently owned or operated by their respective agency, or controlled by their agency through a third party, such as a contractor, that are manufactured by foreign adversaries or have significant components that are manufactured by foreign adversaries.

(b) Within 180 days of the date of this order, the Director of National Intelligence, in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of the Office of Science and Technology Policy, and the heads of other agencies, as appropriate, shall review the reports required by subsection (a) of this section and submit a report to the President assessing the security risks posed by the existing Federal UAS fleet and outlining potential steps that could be taken to mitigate these risks, including, if warranted, discontinuing all Federal use of covered UAS and the expeditious removal of UAS from Federal service.

Sec. 4. *Restricting Use of UAS On or Over Critical Infrastructure or Other Sensitive Sites.* Within 270 days of the date of this order, the Administrator of the Federal Aviation Administration (FAA) shall propose regulations pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016 (Public Law 114–190).

Sec. 5. *Budget.* (a) The heads of all agencies shall consider the replacement of covered UAS to be a priority when developing budget proposals and planning for the use of funds.

(b) The Director of the Office of Management and Budget shall work with the heads of all agencies to identify possible sources of funding to replace covered UAS in the Federal fleet in future submissions of the President's Budget request.

Sec. 6. *Definitions.* For purposes of this order, the following definitions shall apply:

(a) The term ''adversary country'' means the Democratic People's Republic of Korea, the Islamic Republic of Iran, the People's Republic of China, the Russian Federation, or, as determined by the Secretary of Commerce, any other foreign nation, foreign area, or foreign non-government entity engaging in long-term patterns or serious instances of conduct significantly adverse to the national or economic security of the United States.

(b) The term ''covered UAS'' means any UAS that:

(i) is manufactured, in whole or in part, by an entity domiciled in an adversary country;

(ii) uses critical electronic components installed in flight controllers, ground control system processors, radios, digital transmission devices, cameras, or gimbals manufactured, in whole or in part, in an adversary country;

(iii) uses operating software (including cell phone or tablet applications, but not cell phone or tablet operating systems) developed, in whole or in part, by an entity domiciled in an adversary country;

(iv) uses network connectivity or data storage located outside the United States, or administered by any entity domiciled in an adversary country; or

(v) contains hardware and software components used for transmitting photographs, videos, location information, flight paths, or any other data collected by the UAS manufactured by an entity domiciled in an adversary country.

(c) The term ''critical electronic component'' means any electronic device that stores, manipulates, or transfers digital data. The term critical electronic

component does not include, for example, passive electronics such as resistors, and non-data transmitting motors, batteries, and wiring.

(d) The term ''entity'' means a partnership, association, trust, joint venture, corporation, government, group, subgroup, other organization, or person.

(e) The term ''Intelligence Community'' has the same meaning set forth for that term in section 3003(4) of title 50, United States Code.

(f) The term ''National Airspace System'' (NAS) means the common network of United States airspace; air navigation facilities, equipment, and services; airports or landing areas; aeronautical charts, information, and services; related rules, regulations, and procedures; technical information; and manpower and material. The term also includes system components shared jointly by the Departments of Defense, Transportation, and Homeland Security.

(g) The term ''Unmanned Aircraft Systems'' (UAS) means any unmanned aircraft, and the associated elements that are required for the pilot or system operator to operate safely and efficiently in the NAS, including communication links, the components that control the unmanned aircraft, and all critical electronic components. The term UAS does not include any separate communication device, such as a cellular phone or tablet, designed to perform independently of a UAS system, which may be incorporated into the operation of a UAS.

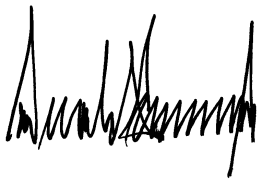
Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 18, 2021.

[FR Doc. 2021–01646
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