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

Rules and Regulations

Federal Register

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

RIN 1615–AC63

DEPARTMENT OF LABOR

Office of the Secretary of Labor

20 CFR Part 655

29 CFR Parts 18 and 503

RIN 1290–AA43

Discretionary Review by the Secretary of Labor

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security and Office of the Secretary, Department of Labor.

ACTION: Direct final rule; withdrawal.

SUMMARY: Due to the receipt of a significant adverse comment, the Department of Homeland Security and the Department of Labor (Departments) are jointly withdrawing the January 4, 2021, direct final rule (DFR) that would have extended DOL's recently established system of discretionary Secretary of Labor review to H–2B temporary labor certification cases (H–2B cases) pending before or decided by the Department of Labor's Board of Alien Labor Certification Appeals and made technical, conforming changes to regulations governing the timing and finality of those decisions and of decisions from the Department of Labor's Administrative Review Board in H–2B cases.

DATES: As of February 2, 2021, the direct final rule published at 86 FR 1 on January 4, 2021, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Todd Smyth, General Counsel, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street NW, Washington, DC 20001–8002; telephone (513) 684–3252. Individuals with hearing or speech impairments may access the telephone number above by TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In the DFR, the Departments stated that if a significant adverse comment was submitted by January 19, 2021, the Departments would publish a timely withdrawal in the **Federal Register** informing the public that the DFR will not take effect. The Departments received a significant adverse comment prior to the close of the comment period and are therefore withdrawing the DFR. The Departments may address all comments, as appropriate, in a new final rule based upon the proposed rule also published in the **Federal Register** on January 4, 2021 (86 FR 29).

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Labor certification processes for temporary employment.

29 CFR Part 18

Administrative practice and procedure, Labor.

29 CFR Part 503

Administrative practice and procedure, Obligations; Enforcement, Immigration and Nationality Act, Temporary alien non-agricultural workers.

■ Accordingly, the amendments to 20 CFR part 655 and 29 CFR parts 18 and 503, published in the **Federal Register** on January 4, 2021 (86 FR 1), which were to take effect February 3, 2021, are withdrawn as of February 2, 2021.

Milton Al Stewart,

Acting Secretary of Labor.

David P. Pekoske,

Acting Secretary of Homeland Security.

[FR Doc. 2021–02317 Filed 2–2–21; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 217, 225, 238, and 252

[Regulations Q, Y, LL, and YY; Docket No. R–1724]

RIN 7100–AF95

Capital Planning and Stress Testing Requirements for Large Bank Holding Companies, Intermediate Holding Companies and Savings and Loan Holding Companies

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

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule (final rule) to tailor the requirements in the Board's capital plan rule (capital plan rule) based on risk. Specifically, as indicated in the Board's October 2019 rulemaking that updated the prudential framework for large bank holding companies and U.S. intermediate holding companies of foreign banking organizations (tailoring framework), the final rule modifies the capital planning, regulatory reporting, and stress capital buffer requirements for firms subject to ''Category IV'' standards under that framework. To be consistent with recent changes to the Board's stress testing rules, the final rule makes other changes to the Board's stress testing rules, Stress Testing Policy Statement, and regulatory reporting requirements, such as the assumptions relating to business plan changes and capital actions and the publication of company-run stress test results for savings and loan holding companies. The final rule also applies the capital planning and stress capital buffer requirements to covered saving and loan holding companies subject to Category II, Category III, and Category IV standards under the tailoring framework.

DATES: The final rule is effective April 5, 2021.

FOR FURTHER INFORMATION CONTACT: Constance Horsley, Deputy Associate Director, (202) 452–5239, Mark Handzlik, Manager (202) 475–6316, Sean Healey, Lead Financial Institution Policy Analyst, (202) 912–4611, Hillel Kipnis, Senior Financial Institution Policy Analyst II, (202) 452–2924, John Simone, Senior Financial Institution Policy Analyst II, (202) 245–4256, Brendan Rowan, Senior Financial

Institution Policy Analyst I, (202) 475–6685, and Palmer Osteen, Financial Institution Policy Analyst II, (202) 785–6025, Division of Supervision and Regulation; Benjamin McDonough, Associate General Counsel, (202) 452–2036, Julie Anthony, Senior Counsel, (202) 475–6682, Asad Kudiya, Senior Counsel, (202) 475–6358, Jonah Kind, Counsel, (202) 452–2045, or Jasmin Keskinen, Attorney, (202) 475–6650, Legal Division, 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:

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I. Changes to the Capital Plan Rule

A. Introduction

i. Background on Capital Planning, Stress Testing and Stress Capital Buffer Requirements

Stress testing is a core element of the Board's regulatory framework and supervisory program for large firms. Stress testing enables the Board to assess whether large firms have sufficient capital to absorb potential losses and continue lending under severely adverse conditions. Experience has demonstrated that rigorous stress testing—together with stronger capital requirements implemented in the Board's capital rule—have significantly improved the resilience of the U.S. banking system.[1]

The Board implemented its capital plan rule to require large firms to develop and maintain capital plans supported by robust processes for assessing their capital adequacy, in 2011.[2] The Board made changes to its regulatory capital rule—which establishes minimum regulatory capital requirements—in 2013. These changes address weaknesses observed during the 2008–2009 financial crisis, including the establishment of a minimum common equity tier 1 (CET1) capital requirement and a fixed capital conservation buffer equal to 2.5 percent of risk-weighted assets.[3]

In March 2020, the Board adopted a final rule (stress capital buffer rule) to integrate its capital plan rule and regulatory capital rule through the establishment of a stress capital buffer requirement, creating a single, risk-sensitive framework for large banking organizations.[4] To achieve individually tailored and risk-sensitive capital requirements for banking organizations subject to the capital plan rule, the stress capital buffer rule establishes the size of a firm's stress capital buffer requirement based in part on a supervisory stress test conducted by the Federal Reserve.

The stress capital buffer rule included several changes to the assumptions embedded in the supervisory stress test, notably removing the assumption that firms make all planned common distributions and excluding material business plan changes from the stress capital buffer requirement calculation. Previously, under the Comprehensive Capital Analysis and Review (CCAR), the Board assumed that a firm would continue to make all planned dividends and share repurchases under stress, and therefore required firms to pre-fund nine quarters of planned dividends and share repurchases. Under the stress capital buffer rule, the Board no longer assumes that a firm would continue to make all planned dividends and share repurchases under stress. The stress capital buffer requirement includes four-quarters of planned dividends in a firm's capital buffer requirements; therefore, firms are subject to a pre-funding requirement of four quarters of planned dividends. This approach recognizes the capital rule's automatic limitations on capital distributions while continuing to promote forward-looking capital planning and mitigate pro-cyclicality.

Prior to the implementation of the stress capital buffer rule, the impact of expected material changes to a firm's business plan were incorporated into a firm's CCAR results. In order to simplify the stress test framework and to reduce burden, material business plan changes are not included in the stress capital buffer requirement. Instead, material changes to a firm's business plan resulting from a merger or acquisition are incorporated into a firm's capital and risk-weighted assets upon consummation of the transaction.

ii. Background on Tailoring Framework

In October 2019, the Board issued a final rule that established a revised framework for applying prudential standards to large firms to align prudential standards more closely to a large firm's risk profile (tailoring rule).[5] The tailoring rule established four categories of prudential standards and applies them based on indicators designed to measure the risk profile of a firm.[6] Table I outlines the scoping

[1] The common equity capital ratios of firms subject to Comprehensive Capital Analysis and Review (CCAR) have more than doubled since 2009. Combined, these firms hold more than $1 trillion of common equity tier 1 capital and are substantially more resilient than they were ten years ago.

[2] *See* 12 CFR 225.8; *see also* Capital Plans, 76 FR 74631 (Dec. 1, 2011). Originally, as a part of the capital plan rule, the Federal Reserve could object to a firm's capital plan based on a qualitative assessment. A subsequent rulemaking changed this requirement such that after CCAR 2020 no firm will be subject to a potential qualitative objection if the firm successfully passed several qualitative evaluations. Amendments to the Capital Plan Rule, 84 FR 8953 (March 13, 2019). All firms subject to the capital plan rule have successfully passed the required number of qualitative evaluations such that no firms are subject to the qualitative objection going forward. As a result, the final rule revises the capital plan rule to remove references to the qualitative objection.

[3] *See* 12 CFR part 217. Large banking organizations also became subject to a countercyclical capital buffer requirement, and the largest and most systemically important firms—global systemically important bank holding companies, or GSIBs—became subject to an additional capital buffer based on a measure of their systemic risk, the GSIB surcharge. *See* Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (Aug. 14, 2015).

[4] *See* Regulations Q, Y, and YY: Regulatory Capital, Capital Plan, and Stress Test Rules, 85 FR 15576 (March 18, 2020).

[5] *See* Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

[6] The final rule increased the threshold for general application of these standards from $50 billion to $100 billion in total consolidated assets.

criteria for categories of prudential standards adopted in the final tailoring rule.

standards adopted in the final tailoring rule.

TABLE I—SCOPING CRITERIA FOR CATEGORIES OF PRUDENTIAL STANDARDS

Category	U.S. banking organizations	Foreign banking organizations
I	U.S. GSIBs and their depository institution subsidiaries	N/A.
II	$700 billion or more in total assets; or $75 billion or more in cross-jurisdictional activity; and do not meet the criteria for Category I.	
III	$250 billion or more in total assets; or $75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure; and do not meet the criteria for Category I or II.	
IV	$100 billion or more in total assets; and do not meet the criteria for Category I–III.	

The tailoring rule made two changes to the stress testing rules for firms subject to Category IV standards. First, the tailoring rule removed the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of company-run stress tests as defined in the Board's stress testing rules. Second, the tailoring rule changed the frequency of the supervisory stress test for firms subject to Category IV standards from annual to biennial.[7] In the tailoring rule, the Board also foreshadowed that it intended to provide greater flexibility to firms subject to Category IV standards to develop their annual capital plans and consider additional regulatory reporting burden relief in a separate proposal.[8]

As a part of the tailoring rule, covered savings and loan holding companies were made subject to the Board's supervisory stress test and company-run stress test requirements in the same manner as comparable bank holding companies. In the tailoring rule, the Board indicated that it would apply capital planning requirements to savings and loan holding companies as part of a separate notice.

iii. Overview of Proposed Rule and Summary of Comments

On October 7, 2020, the Board issued a proposed rule (proposed rule or proposal) that would have modified the Board's capital planning and stress capital buffer requirements to be more consistent with the tailoring framework.[9] Specifically, for firms subject to Category IV standards, the proposal would have generally removed the requirement under the capital plan rule to calculate forward-looking projections of capital under scenarios provided by the Board. In addition, the proposal would have reduced the frequency with which the Federal Reserve would calculate the decline in the CET1 capital ratios for firms subject to Category IV standards for purposes of the stress capital buffer requirement, by revising it from an annual to a biennial calculation. The proposal also would have given these firms the ability to elect to participate in the supervisory stress test—and receive an updated stress capital buffer requirement—in a year in which they would not generally be subject to the supervisory stress test.[10]

The proposal included changes to the Board's supervisory stress test and the company-run stress test rules.[11] In particular, the proposal would have clarified the assumptions related to business plan changes, introduced revisions to the capital action assumptions, and required certain savings and loan holding companies to publicly disclose their stress tests results in a parallel manner to bank holding companies.

The proposal also solicited comment on several topics, including the Federal Reserve's guidance on capital planning, a definition of ''common stock dividend'' for purposes of the capital plan rule, and the application of capital planning and stress capital buffer requirements to savings and loan holding companies.

The Board received thirteen comment letters from banking organizations, public interest groups, trade associations, and individuals. While many commenters were supportive of the proposal, some commenters opposed or requested additional clarification on parts of the proposed rule, including the changes related to capital planning requirements, the calculation and timing of the stress capital buffer requirement, and regulatory reporting changes for firms subject to Category IV requirements. In addition, commenters provided input on the Board's capital planning guidance, a definition of a common stock dividend for purposes of the capital plan rule, and the application of capital planning and stress capital buffer requirements to savings and loan holding companies. The Board's responses to the comments are provided in the discussion of the final rule. The Board also received several comments on issues not related to the proposal, which are not addressed below as they are outside the scope of this rulemaking.[12]

[7] Both changes related to stress testing rules for firms subject to Category IV standards—(1) to remove the requirement to conduct and to publicly disclose the results of the company-run stress tests; and (2) to change the frequency of the supervisory stress test to biennial—were consistent with amendments to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010), made by the Economic Growth, Regulatory Relief and Consumer Protection Act (EGRRCPA). *See* Public Law 115–174, 132 Stat. 1296 (2018).

[8] *See* 85 FR 15576, 15593, fn 57.

[9] 85 FR 63222 (Oct. 7, 2020).

[10] The proposal would have allowed the Board, under certain circumstances, based on the macroeconomic outlook or based on the firm's risk profile, financial condition or corporate structure, to require a firm subject to Category IV standards to submit a capital plan under scenarios provided by the Board.

[11] *See* 12 CFR part 252, subparts E and F.

[12] In particular, the Board received comments related to allowed distributions during a capital plan resubmission period, the definition of ''material'' in the capital plan rule, collecting additional data related to purchase accounting, reintroducing the materiality threshold for a regulatory reporting requirement, including climate risks in the stress test, the criteria for application of the global market shock and large counterparty default components, the calculation of capital and loss absorbing capacity requirements for intermediate holding companies, the requirements for including capital actions in company-run stress tests, the inclusion of leverage ratios in the stress test, and the volatility of the stress capital buffer requirement. The Board also received several technical comments on the supervisory stress test models, including related to its revenue model,

Continued

iv. Overview of Final Rule

Consistent with the proposal, the final rule revises the capital planning requirements for firms subject to Category IV standards to better align such requirements with the risk profiles of these firms. Specifically, the final rule removes the requirement for firms subject to Category IV standards to provide projections in a firm's capital plan under the supervisory scenarios and the requirement to submit FR Y–14A schedules associated with company-run stress test results. The final rule also replaces the use of ''large and noncomplex bank holding company'' with the definition of a firm subject to Category IV standards.

The final rule requires the stress test portion of the stress capital buffer requirement of a firm subject to Category IV standards to be updated in a manner consistent with the frequency of the supervisory stress test. The stress test portion of such a firm's stress capital buffer requirement will not be updated in a year in which it does not participate in the supervisory stress test. The final rule allows such a firm to elect to opt-in to a stress test in a year in which the firm would not generally be subject to the supervisory stress test and to receive an updated stress capital buffer requirement in that year.

The final rule adopts the proposed changes to the Board's supervisory stress test and the company-run stress test rules, which clarify the assumptions firms and the Federal Reserve should make regarding the effects of material business plan changes in their stress test results and require certain savings and loan holding companies to publicly disclose their stress tests results.

The final rule also applies capital planning and stress capital buffer requirements to covered saving and loan holding companies subject to Category II, Category III, or Category IV standards under the tailoring framework.

B. Changes to Capital Planning Requirements for Firms Subject to Category IV Standards

Consistent with section 401(e) of EGRRCPA, the tailoring rule adjusted the frequency of supervisory stress testing for firms subject to Category IV standards to every other year and eliminated the requirement to conduct and publicly disclose the results of a company-run stress test under the scenarios provided by the Board. These adjustments reflected the lower risk profile of a firm subject to Category IV standards relative to firms subject to Category I, II, or III standards. The final rule tailors the requirements in the capital plan rule that currently apply to Category IV firms, as discussed below.

The proposal would have updated the terminology in the capital plan rule to conform to the terminology used in the tailoring rule by removing the term ''large and noncomplex bank holding company'' and replacing it with the definition of a firm subject to Category IV standards. No comments were received on this change and the final rule adopts it as proposed. Given the effective date of this final rule, the definition of ''large and noncomplex bank holding company'' will be changed on the FR Y–14 reports beginning with the December 31, 2020, as of date.[13]

Under the proposal, firms subject to Category IV standards generally would not have been required to calculate estimates of projected revenues, losses, reserves, or pro forma capital levels (effectively a form of stress testing) using scenarios provided by the Board. However, under certain circumstances, based on the macroeconomic outlook or based on the firm's risk profile, financial condition, or corporate structure, the proposal would have allowed the Board to require a firm subject to Category IV standards to submit a capital plan under scenarios provided by the Board. No comments were received on the removal of the general requirement for firms subject to Category IV standards to calculate stress test results under scenarios provided by the Board, or on the stipulation that the Board may require firms to make such calculations in particular circumstances. The final rule adopts these changes as proposed.

The proposal would have updated regulatory reporting requirements to reflect the tailoring rule's elimination of the company-run stress test requirement for a firm subject to Category IV standards. Specifically, under the proposal such firms would no longer have been required to submit to the Federal Reserve forward-looking projections in the granular form prescribed by the FR Y–14A, Schedule A—Summary, Schedule B—Scenario, Schedule F—Business Plan Changes, and Appendix A—Supporting Documentation.

A commenter on the proposal noted that the Federal Reserve did not articulate the public benefits of removing the reporting requirements for firms subject to Category IV standards. Removing these reporting requirements is necessary to effectuate the elimination of the company-run stress test requirement for these firms adopted in the tailoring rule. As discussed in the tailoring rule, eliminating the company-run stress test requirement for firms subject to Category IV standards is consistent with the statutory provisions and appropriate for these firms' risk profile. These reporting schedules are not publicly available, so the adjustments to the reporting requirements do not affect the information in the public domain. This revision comes into effect beginning with the 2021 capital planning cycle.[14]

The proposal would have added four line items to FR Y–14A, Schedule C—Regulatory Capital Instruments, to provide the information needed to determine whether planned capital distributions included in a firm's capital plan are consistent with any effective capital distribution limitations that would apply under the firm's projections in the Internal baseline scenario, as required by the capital plan rule.[15] No comments were received on this aspect of the proposal. To support compliance with the capital plan rule, these line items have been added to FR Y–14A, Schedule C, and are effective for the April 5, 2021, submission with a December 31, 2020, as of date.[16] This will ensure that the Board can confirm compliance with the capital plan rule during the 2021 capital planning cycle. Under the final rule, firms subject to Category IV standards will continue to be required to provide a forward-looking analysis of income and capital levels under expected and stressful conditions in their annual capital plans. These projections are required to be tailored to, and sufficiently capture, the firm's exposures, activities, and idiosyncratic risks in their capital plans.[17] This includes projections under a scenario

global market shock losses, and losses related to large counterparty defaults.

[13] The proposal also would have modified the terms ''BHC baseline scenario'' and ''BHC stress scenario'' in the capital plan rule to ''Firm baseline scenario'' and ''Firm stress scenario,'' respectively. To clarify that these are scenarios generated internally by firms, the final rule modifies the terms ''BHC baseline scenario'' and ''BHC stress scenario'' to ''Internal baseline scenario'' and ''Internal stress scenario,'' respectively. These terms will be changed on the FR Y–14 reports beginning with the December 31, 2020, as of date.

[14] Firms subject to Category IV standards will continue to be required to complete the FR Y–14A, Schedule C—Regulatory Capital Instruments, Schedule E—Operational Risk, and the Collection of Supplemental CECL Information.

[15] The line items would be the projections of Common Equity Tier 1 capital ratio, Tier 1 capital ratio, Total capital ratio, and net income under the Internal baseline scenario.

[16] FR Y–14A, Schedule C, is required for all firms subject to the capital plan rule on an annual basis.

[17] The analysis should cover an appropriate period (usually a period of at least two years) to capture the relevant risks to a firm. A firm should estimate losses, revenues, expenses, and capital using sound methods that relate macroeconomic and other risk drivers to its estimates.

designed by the firm that stresses the specific vulnerabilities of the firm's risk profile and operations. This scenario should incorporate stressful conditions and events that could adversely affect the firm's capital adequacy.

While the final rule does not require firms subject to Category IV standards to include certain elements in their capital plans, all banking organizations, regardless of size and complexity, are expected to have the capacity to analyze the potential impact of adverse outcomes on their financial condition, including on capital.[18] Therefore, risk-management practices should be tailored to the risk and complexity of the individual firm and should include practices to identify and assess its sensitivity to unexpected adverse outcomes before they occur. The Federal Reserve will continue to conduct an annual assessment of the capital plan of a firm subject to Category IV standards as part of its ongoing supervisory process, and the results of this assessment will continue to be an input into the firm's capital planning and positions component of the Large Financial Institution Rating System.

C. Calculation and Timing of the Stress Capital Buffer Requirement for Firms Subject to Category IV Standards

Firms subject to Category IV standards are currently subject to supervisory stress testing on a two-year cycle. To align with the stress testing cycle for firms subject to Category IV standards, the proposal would have required the portion of the stress capital buffer requirement that is calculated as the decline in a firm's CET1 capital ratio to be calculated every other year. During a year in which a firm subject to Category IV standards does not undergo a supervisory stress test, the firm would have received an updated stress capital buffer requirement that reflects the firm's updated planned common stock dividends.

A commenter objected to the proposed frequency of adjustments for the calculation of the decline in CET1 capital ratios for purposes of stress capital buffer requirement for firms subject to Category IV standards. This commenter argued that a biennial frequency would adversely affect comparability across firms subject to the stress capital buffer requirement and cause their stress capital buffer requirements to rely on outdated information. As stated in the proposal, these adjustments align with the requirement under EGRRCPA to apply supervisory stress testing on a ''periodic'' basis to firms with $100 billion to $250 billion in assets, and the revisions to the supervisory stress test under the tailoring rule that changed the stress testing cycle for firms subject to Category IV standards from annual to biennial.[19] [20] Therefore, consistent with the proposal, the final rule requires the portion of the stress capital buffer requirement that is calculated as the decline in the CET1 capital ratio for firms subject to Category IV standards to be calculated every other year.[21]

The proposal would have allowed a firm subject to Category IV standards to elect to participate in the supervisory stress test in a year in which the firm would not normally be subject to the supervisory stress test. A firm that makes such an election would be a full participant in that year's supervisory stress test, including being subject to the disclosure requirements related to the firm's supervisory stress test results, and would receive an updated stress capital buffer requirement.

Commenters generally supported the opt-in election set forth in the proposal and stated that the flexibility provided under this approach is appropriate for the risk profile of firms subject to Category IV standards. By contrast, one commenter argued that the opt-in election could undermine the credibility of the stress testing framework and cause concern regarding banking organizations that choose not to participate (that is, firms that choose not to participate may be perceived as being in weaker condition).

The final rule allows firms subject to Category IV standards to request an updated stress capital buffer requirement in a year in which it would not generally be subject to the supervisory stress test. A firm's decision to request such an update could stem from various factors, such as recent significant changes to the firm's risk profile or corporate structure. The approach in the final rule reduces burden as a general matter while also providing flexibility for firm-specific requests.

The proposal would have required a firm subject to Category IV standards to provide written notice of its election to the Board and appropriate Federal Reserve Bank by December 31 of the year preceding the year in which it seeks to opt in to the supervisory stress test. For purposes of the 2021 supervisory stress test, the proposal included transitional procedures such that a firm subject to Category IV standards would have had until February 15, 2021, to provide written notice of its opt-in election to the Board and appropriate Federal Reserve Bank.

A number of commenters argued that the proposal's December 31 cut-off date for the opt-in notification is too early and requested that the final rule provide a mid-March deadline for a firm subject to Category IV standards to notify the Board and the appropriate Federal Reserve Bank in writing of its opt-in election for that year's supervisory stress test. Additionally, these commenters argued that the February 15 deadline is too early for the 2021 stress test cycle and requested more time to make their opt-in election.

In response to these comments, the final rule requires firms subject to Category IV standards to provide prior written notice of their opt-in election to the Board and the appropriate Federal Reserve Bank by January 15 of any year in which they are not required to participate in the supervisory stress test, rather than the earlier December 31 deadline. The January 15 date will provide these firms with more time to better understand their year-end financial results. The Board is also selecting this date because it generally precedes the announcement of stress test scenarios. Under the final rule, for purposes of the 2021 stress testing cycle, firms subject to Category IV standards have until April 5, 2021, to provide prior written notice of their opt-in

[18] For example, bank holding companies with less than $50 billion in total consolidated assets are subject to guidance that clarifies such firms are expected to hold capital commensurate with their overall risk profile. *See* SR Letter 09–4, Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies (Feb. 24, 2009, revised July 24, 2020). Holding companies with less than $100 billion in total consolidated assets are subject to an overall evaluation and rating of managerial and financial condition and an assessment of future potential risk to subsidiary depository institution(s) as part of the RFI or Modified RFI rating. *See* SR Letter 19–4/CA Letter 19–3, Supervisory Rating System for Holding Companies with Total Consolidated Assets Less Than $100 billion (Feb. 26, 2019) and SR Letter 13–21, Inspection Frequency and Scope Requirements for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of $10 Billion or Less (Dec. 17, 2019, revised Mar. 6, 2019). Bank holding companies with total consolidated assets of $100 billion or greater and certain savings and loan holding companies are subject to a supervisory evaluation of whether a covered firm possesses sufficient financial and operational strength and resilience to maintain safe-and-sound operations through a range of conditions, including stressful ones. *See* SR Letter 19–3, Large Financial Institution (LFI) Rating System (Feb. 26, 2019).

[19] *See* Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155, 115th Congress (2018).

[20] *See* Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 FR 59032 (Nov. 1, 2019).

[21] The final rule also clarifies that a firm will not receive notice of its stress capital buffer requirement until the first year the Board conducts a supervisory stress test of the firm.

election to the Board and the appropriate Federal Reserve Bank.[22]

Commenters requested clarity on whether there would be required disclosure of the stress capital buffer requirement for a firm subject to Category IV standards that did not participate in the supervisory stress test. One of these commenters supported mandatory disclosure of such a firm's stress capital buffer requirement, regardless of opt-in or mandatory participation in the supervisory stress test for any given year.

For all firms subject to the capital plan rule, the stress capital buffer requirement will be updated and publicly disclosed on an annual basis. During a year in which a firm subject to Category IV standards is not generally subject to the supervisory stress test, this firm will receive an updated stress capital buffer requirement that reflects the firm's updated planned common stock dividends.

As discussed in the proposal and allowed under the current capital plan rule, the Board retains the ability to require a firm to resubmit its capital plan if, among other reasons, the Board determines that there has been or will likely be a material change in the firm's risk profile, financial condition, or corporate structure, or if changes to financial market conditions or the macroeconomic outlook require the use of updated scenarios. If a firm resubmits its capital plan, the Board may recalculate its stress capital buffer requirement and may use a new severely adverse scenario. These requirements help ensure that a firm's stress capital buffer requirement remains commensurate with its risk profile.

D. Changes to Stress Test Rules for Firms With Total Consolidated Assets of at Least $100 Billion

i. Business Plan Change Assumption

For purposes of the supervisory stress test, the Board does not incorporate the impact of expected changes to a firm's business plan that are likely to have a material impact on the firm's capital adequacy and funding profile (material business plan changes) in the balance sheet, risk-weighted asset, and capital projections. In order to ensure alignment in the assumptions in the supervisory and company-run stress tests, the proposal would have clarified that the Board and firms would exclude the impacts of unconsummated material business plan changes in the supervisory and company-run stress tests conducted pursuant to the Dodd-Frank Act. As this assumption would be reflected in the stress test rules, the proposal would have removed the corresponding section from the Stress Testing Policy Statement. No comments were received on these aspects of the proposal, and the final rule adopts them as proposed.

Under the final rule, each firm will continue to be required to include in its capital plan a discussion of any expected changes to the firm's business plan that are likely to have a material impact on the firm's capital adequacy or liquidity. Each firm will also continue to be required to incorporate impacts of material business plan changes in projections of income and capital levels under all scenarios required for purposes of capital planning. This requirement helps to ensure that a firm appropriately understands the impact of changes to its business on the firm's forward-looking capital position. If a material business plan change resulted in or would result in a material change in a firm's risk profile, the firm would still be required to resubmit its capital plan.

ii. Changes to Reporting Requirements Related to Stress Test Rule Changes

The proposal would have updated the FR Y–14 reporting requirements for firms with total consolidated assets of at least $100 billion to conform with changes made to the stress test rules.

Consistent with the proposal and as described above, the final rule no longer requires firms subject to Category IV standards to submit FR Y–14A schedules associated with company-run stress test results. These schedules include FR Y–14A, Schedule A, Schedule B, Schedule F, and Appendix A.

In order to reflect the exclusion of material business plan changes in company-run stress test projections while also ensuring firms incorporate impacts of material business plan changes in projections of income and capital levels required for purposes of capital planning, the proposal would create two sub-schedules for all items on FR Y–14A, Schedule A and Schedule C: One where a firm would not incorporate the effects of material business plan changes and one where a firm would incorporate the effects of business plan changes, consistent with prior FR Y–14A reporting requirements.[23] [24] Firms subject to Category I, II, or III standards would be required to submit the two sub-schedules for both FR Y–14A, Schedule A and Schedule C, and firms subject to Category IV standards would be required to submit the two sub-schedules for only FR Y–14A, Schedule C.

Firms would report projections on the ''DFAST'' sub-schedule under the scenarios provided by the Federal Reserve, and firms would report projections on the ''CCAR'' sub-schedule under expected conditions and under a range of scenarios, including the supervisory severely adverse scenario provided by the Federal Reserve and at least one baseline scenario and one stress scenario generated by the firms. Given the changes made to FR Y–14A, Schedule A, firms subject to Category I, II, or III standards would no longer be required to submit the supervisory baseline scenario for FR Y–14A, Schedule F—Business Plan Changes. As noted in sections of the proposal and this final rule on the Paperwork Reduction Act, firms are required to report FR Y–14A, Schedule F, under the Internal baseline and supervisory severely adverse scenarios.

A commenter opposed the proposed reporting changes as they would increase the reporting burden for firms subject to Category I, II, or III standards, and instead suggested that the Board add scenarios to the FR Y–14A, Schedule F—Business Plan Changes. Although the changes in the proposal would modestly increase reporting requirements for firms subject to Category I, II, or III standards that include material business plan changes in their capital plan submission, projections both inclusive and exclusive of material business plan changes are necessary for the Federal Reserve to monitor that a firm appropriately plans for changes to its business for purposes of capital planning. In addition, the proposed reporting changes ensure

[22] In order to provide notice to the Federal Reserve, firms should send a letter to the appropriate Federal Reserve Bank and to the Stress Testing Communication mailbox (*info.stresstesting@frb.gov*).

[23] These sub-schedules include FR Y–14A, Schedule A.1.a—Income Statement, Schedule A.1.b—Balance Sheet, Schedule A.1.c.1—Standardized RWA, Schedule A.1.d—Capital, Schedule A.2.a—Retail Balance and Loss Projections, Schedule A.3—AFS/HTM Securities, Schedule A.4—Trading, Schedule A.5—Counterparty Credit Risk, Schedule A.6—Operational Risk, and Schedule A.7—Pre-Provision Net Revenue.

[24] On FR Y–14A, Schedule A, the ''DFAST'' sub-schedule would not include the effects of material business plan changes and the ''CCAR'' sub-schedule would include these effects. On FR Y–14A, Schedule C, the ''SCB'' sub-schedule would not include the effects of material business plan changes and the ''CCAR'' sub-schedule would include these effects.

reporting of company-run stress results that are comparable to the supervisory stress test results. These projections are also necessary for the Federal Reserve to be able to project stress losses and calculate the dividend add-on for the stress capital buffer requirement using the assumptions in the stress test rules. In response to the commenter's suggestion, subtracting the values reported on FR Y–14A, Schedule F, from those reported on FR Y–14A, Schedule A, would not provide the impact of the business plan change on projections, as Schedule F only captures the ''day one'' impact of the business plan change. Therefore, the final rule adopts these reporting requirements as proposed.

In addition, several commenters requested clarification about whether the proposed FR Y–14A reporting requirements include all or only material business plan changes. Under the final rule, firms should exclude the effects of material business plan changes from the ''DFAST'' sub-schedule of FR Y–14A, Schedule A—Summary, and the ''SCB'' sub-schedule of Schedule C—Regulatory Capital Instruments. Firms should include only material business plan changes in FR Y–14A, Schedule F—Business Plan Changes.

These revisions to the FR Y–14A will be effective as of the FR Y–14A submission due on April 5, 2021.

E. Covered Savings and Loan Holding Companies

i. Application of Capital Plan Rule

The Board currently assesses the condition, performance, and activities of savings and loan holding companies on a consolidated basis in the same manner that the Board assesses the condition, performance, and activities of bank holding companies, taking into account any unique characteristics of savings and loan holding companies and the requirements of the Home Owners' Loan Act.[25] Under the tailoring rule, the Board applies supervisory stress testing requirements to covered savings and loan holding companies subject to Category II, III, or IV standards.[26] The tailoring rule also applies company-run stress test requirements to covered savings and loan holding companies subject to Category II or III standards. The scale, complexity, and risk factors for these firms warrant more sophisticated capital planning, more frequent company-run stress testing, and greater supervisory oversight through supervisory stress testing than for smaller and less complex firms. To implement the supervisory stress test for covered savings and loan holding companies, the tailoring rule required a covered savings and loan holding company to report the FR Y–14 report in the same manner as a bank holding company.

The proposal solicited comment on whether to apply capital planning and stress capital buffer requirements to covered savings and loan holding companies subject to Category II, III, or IV standards. In particular, the Board solicited comment on the advantages and disadvantages of applying these requirements to large covered savings and loan holding companies in the same manner as they apply to large bank holding companies, whether any adjustments to those requirements should be made for covered savings and loan holding companies, what other approaches to applying capital planning requirements to covered savings and loan holding companies the Board should consider, and whether the current transition period in the capital plan rule for large bank holding companies would be appropriate for covered savings and loan holding companies. The Board received two comments on this element of the proposal. Commenters suggested that the Board provide covered savings and loan holding companies the option to comply with capital planning and stress capital buffer requirements, particularly for those covered savings and loan holding companies that are subject to less risk. To the extent compliance is mandatory, commenters asserted that the Board should tailor the requirements to a covered savings and loan holding company's risk profile and provide an extended transition period for covered savings and loan holding companies to come into compliance with such requirements.

For the reasons set forth below, the Board is applying the capital planning and stress capital buffer requirements to covered savings and loan holding companies subject to Category II, III, or IV standards in the same manner as they apply to large bank holding companies subject to Category II, III, or IV standards.[27] Additionally, the Board is adopting capital planning reporting requirements for covered savings and loan holding companies.[28] A covered savings and loan holding company that becomes subject to capital planning requirements as of the effective date of this rule would be required to submit its first capital plan on April 5, 2022.

Capital is central to a firm's ability to absorb unexpected losses and continue to lend to creditworthy businesses and consumers. The Board's capital planning requirements for large bank holding companies help to ensure that these firms have robust systems and processes that incorporate forward-looking projections of revenue and losses to monitor and maintain their internal capital adequacy. The stress capital buffer requirement helps ensure that a firm can meet its obligations to creditors and other counterparties, as well as continue to serve as a financial intermediary through periods of financial and economic stress. As the Board noted in its final tailoring rule, covered savings and loan holding companies engage in many of the same activities and face similar risks as bank holding companies. Accordingly, the final rule applies capital planning and stress capital buffer requirements to covered savings and loan holding companies subject to Category II, III, or IV standards in the same manner as they apply to large bank holding companies subject to Category II, III, or IV standards.

While commenters recommended that the Board permit a covered savings and loan holding company to opt out of these requirements because they have different risk profiles than similarly sized bank holding companies, the final rule does not include such an option because these requirements will promote the safety and soundness of a covered savings and loan holding company by ensuring that a covered savings and loan holding company is required to maintain capital commensurate with its risk profile and activities. Moreover, the capital planning and stress testing requirements that apply to bank holding companies do not provide for such an opt-out election.

One commenter asserted that capital planning requirements should be appropriately tailored to the risk profile of covered savings and loan holding companies, including that these firms

[25] 12 U.S.C. 1461 *et seq.*

[26] A covered savings and loan holding company is a savings and loan holding company not predominantly engaged in insurance or commercial activities (*see* 12 CFR 217.2).

[27] The capital planning and stress capital buffer requirements for covered savings and loan holding companies subject to Category II, III, or IV standards are codified at 12 CFR 238.170. The Board also has made conforming changes to its capital rule and stress testing rules for covered savings and loan holding companies.

[28] Covered savings and loan holding companies subject to Category II or III standards will be required to submit FR Y–14A, Schedule A—Summary, Schedule B—Scenario, Schedule C—Regulatory Capital Instruments, Schedule E—Operational Risk, and Schedule F—Business Plan Changes. Covered savings and loan holding companies subject to Category IV standards will be required to submit FR Y–14A, Schedule C—Regulatory Capital Instruments.

should not be subject to the large counterparty default component or the qualitative objection, and should only have to file certain schedules of the FR Y–14A. The Board's capital planning requirements are tailored based on a firm's tailoring category as outlined above in Section I.B of this Supplementary Information section, as well as certain attributes of the firm that are independent of its tailoring category. Specifically, the components of the capital planning requirements that apply to a firm are naturally tailored as they require a firm's capital plan to include an assessment of the expected uses and sources of capital over the planning horizon that reflects the firm's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions.[29] Similarly, the large counterparty default component in the Board's company-run stress testing requirements for bank holding companies and covered savings and loan holding companies is also tailored based on a firm's risk profile as it only applies based on the firm's financial condition, size, complexity, risk profile, scope of operations, or activities.[30]

Further, like the capital planning requirements for large bank holding companies, the Board will not have the ability to issue a qualitative objection to a covered savings and loan holding company's capital plan; rather, it will conduct a robust qualitative review of covered savings and loan holding companies' capital planning practices during the traditional supervisory process. Finally, reporting requirements on the FR Y–14A are also tailored, as certain firms are not required to complete certain schedules based on their size and complexity (*i.e.,* firms subject to Category IV standards are not required to complete FR Y–14A, Schedule A—Summary).

A commenter also asserted that the Board should provide a transition period until at least the 2024 capital planning cycle for covered and savings and loan holding companies to come into compliance with capital planning and stress capital buffer requirements, and should provide feedback on firms' initial capital plans on a confidential basis without the initial submission being evaluated under the Federal Reserve's LFI ratings framework. The commenter asserted that such a transition would provide the firm with additional time to understand the Federal Reserve's supervisory expectations prior to receiving public feedback.

Under the tailoring final rules, covered savings and loan holding companies were required to comply with stress testing requirements on the first day of the ninth quarter following the effective date of the final rule. A firm that was subject to the requirements on the date of the tailoring final rule would be required to comply with stress testing requirements for the 2022 stress test cycle. In addition, a firm would be required to file its first FR Y–14A submission on April 5, 2022. To align the stress testing requirements with the capital planning requirements, the capital plan rule applicable to covered savings and loan holding companies would have the same transition provision as the rule applicable to bank holding companies. Specifically, a firm that becomes subject to the rule on or before September 30 of a calendar year must comply with the rule on January 1 of the next calendar year and a firm that becomes subject to the rule after September 30 of a calendar year must comply with the requirements beginning on January 1 of the second calendar year after it meets the relevant threshold. A covered savings and loan holding company will not receive a stress capital buffer requirement until the first year the Board conducts a supervisory stress test of the firm.

Moreover, the Federal Reserve generally does not provide firms with public feedback on their capital plans. However, the initial submission will provide the Federal Reserve with information about the firm's capital planning practices that will be considered as part of the firm's rating evaluation.

The Board also proposed to revise the FR Y–14A report to require covered savings and loan holding companies subject to Category II or III standards to submit FR Y–14A, Schedule A—Summary, Schedule B—Scenario, Schedule E—Operational Risk, and Schedule F—Business Plan Changes, as these schedules are needed for the company-run and supervisory stress tests and for capital planning supervision. In the proposal, the Board asked whether it should revise the regulatory reporting requirements for covered savings and loan holding companies if they were to become subject to the capital plan rule. Given that the Board is applying capital planning and stress capital buffer requirements to savings and loan holding companies, the Board is also requiring covered savings and loan holding companies subject to Category II, III, or IV standards to submit FR Y–14A, Schedule C—Regulatory Capital Instruments, as this schedule is essential for monitoring compliance with the capital plan rule. Requiring covered savings and loan holding companies to submit this information would better align the FR Y–14A reporting requirements for firms with similar risk characteristics.

ii. Stress Test Rule Changes

As a part of the tailoring rule, covered savings and loan holding companies were made subject to the Board's supervisory stress test and company-run stress test requirements in the same manner as bank holding companies. Currently, the capital action assumptions in the stress test rules for covered savings and loan holding companies are different than those for bank holding companies because they were not included in the stress capital buffer rule, in which the Board updated the distribution assumptions for bank holding companies. The proposal would have amended the stress test rules for covered savings and loan holding companies so the capital distribution assumptions for covered savings and loan holding companies would match the assumptions for bank holding companies.

The proposal also would have addressed an omission in the Board's company-run stress test requirements to ensure that all savings and loan holding companies with more than $250 billion in assets are required to publicly disclose the results of their stress tests, similar to the requirement for bank holding companies. This would have ensured the requirements are consistent with the Dodd-Frank Act.

No comments were received on these aspects of the proposal, and the final rule adopts them as proposed.

F. Definition of Common Stock Dividend in Capital Plan Rule

As a part of the proposal, the Board sought comment on a definition for common stock dividends in the capital plan rule. The proposal noted that the definition of common stock dividend could be aligned with the definition on the FR Y–9C or could include payments of cash to parent organizations irrespective of whether the amount paid is debited from the firm's retained earnings.

Some commenters, particularly foreign banking organizations, opposed a definition of dividends for the capital

[29] The Federal Reserve's supervisory guidance for capital planning is also tailored to a firm's risk profile. For example, the Federal Reserve SR Letter 15–19 notes that ''a firm should employ risk measurement approaches that are appropriate for its size, complexity, and risk profile.'' *See* SR Letter 15–19, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms,'' December 18, 2015.

[30] *See* 12 CFR 238.143(b)(2)(ii); 12 CFR 252.54(b)(2)(ii).

plan rule. These commenters noted that the definition provided in the proposal was overly broad and could capture capital actions that may not be considered dividends from corporate law or accounting perspectives. Additionally, they noted that the definition could have unforeseen consequences on intercompany agreements, including payments for intercompany services, tax sharing, and other purposes.

The Board is not at this time adopting a definition of dividends for the capital plan rule. The FR Y–14A defines dividends by referencing the definition of dividend in the Glossary to the FR Y–9C instructions. That definition provides, among other things, that cash dividends are ''payments of cash to shareholders in proportion to the number of shares they own.'' Firms should continue to use this definition when reporting the FR Y–14A.

The Board will continue to monitor firm behavior on the classification of capital actions and the timing of those actions over the capital plan projection horizon. Using this information, the Board will continue to consider whether a definition of dividends for the capital plan rule is required in order to provide comparable treatment to all firms subject to the requirements.

G. Impact Analysis

The regulatory reporting aspects of the final rule include additional compliance burden on firms subject to Category I through III standards, but a reduction in compliance burden on firms subject to Category IV standards.

Covered savings and loan holding companies have not been subject to supervisory stress testing requirements to date. One covered savings and loan holding company would become subject to the requirements based on third quarter 2020 data, and this firm is currently constrained by its leverage requirement. It is estimated that this firm's stress capital buffer would need to be over 2.75 times the median of firms' 2020 stress capital buffers for there to be an increase in its capital requirements.

II. Board Guidance on Capital Planning

The Board has issued guidance related to sound capital planning practices that has been tailored based on the size, scope of operations, activities, and systemic importance of a firm. In the proposal, the Board requested comment on all aspects of its guidance on capital planning for firms of all sizes, consistent with its ongoing practice of reviewing its policies to ensure that they are having their intended effect. The Board's key capital planning guidance includes supervision and regulation (SR) letters, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms'' (SR 15–18),[31] ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms'' (SR 15–19),[32] ''Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies'' (SR 09–4),[33] and the ''Policy Statement on the Payment of Cash Dividends.'' [34] The Board also encouraged feedback on any other aspects of its guidance that relate to capital planning.

The Board received numerous comments on its capital planning guidance. The Board will address these comments separately.

III. Administrative Law Matters

A. Paperwork Reduction Act

Certain provisions of the final rule contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). 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 final rule under the authority delegated to the Board by OMB.

The proposed rule would have revised collection of information requirements subject to the PRA. The Board proposed to revise the FR Y–14A/Q/M, FR LL, and the FR YY to reflect the changes proposed in the proposed rule. The OMB control numbers are 7100–0341, 7100–0380, and 7100–0350, respectively. The Board received no comments regarding these proposed revisions under the PRA, and is adopting the revisions as proposed, with certain modifications to account for changes between the proposed rule and final rule.

Revisions, With Extension for Three Years, of the Following Information Collections:

(1) *Report title:* Capital Assessments and Stress Testing Reports.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Frequency: Annually, quarterly, and monthly.

Respondents: These collections of information are applicable to bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), and covered savings and loan holding companies (SLHCs) [35] with $100 billion or more in total consolidated assets, as based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128); or (ii) if the firm has not filed an FR Y–9C for each of the most recent four quarters, then the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs. Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: FR Y–14A/Q: 36; FR Y–14M: 34.[36]

Estimated average hours per response: FR Y–14A: 1,250 hours; FR Y–14Q: 2,143 hours; FR Y–14M: 1,072 hours; FR Y–14 On-going Automation Revisions: 480 hours; FR Y–14 Attestation On-going Attestation: 2,560 hours.

Estimated annual burden hours: FR Y–14A: 45,000 hours; FR Y–14Q: 308,592 hours; FR Y–14M: 437,376 hours; FR Y–14 On-going Automation

[31] SR letter 15–18, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms,'' December 18, 2015. *See https://www.federalreserve.gov/supervisionreg/srletters/sr1518.htm.*

[32] SR letter 15–19, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms,'' December 18, 2015. *See https://www.federalreserve.gov/supervisionreg/srletters/sr1519.htm.*

[33] SR letter 09–4, ''Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies,'' February 24, 2009. *See https://www.federalreserve.gov/boarddocs/srletters/2009/SR0904.htm.*

[34] ''UNSOUND BANKING PRACTICES—Cash Dividends Not Fully Covered by Earnings,'' November 14, 1985. *See https://www.federalreserve.gov/boarddocs/srletters/2009/sr0904a2.pdf.*

[35] Covered SLHCs are those which are not substantially engaged in insurance or commercial activities. For more information, see the definition of ''covered savings and loan holding company'' provided in 12 CFR 217.2 and 12 CFR 238.2(ff). Covered SLHCs with $100 billion or more in total consolidated assets became members of the FR Y–14Q and FR Y–14M panels effective June 30, 2020, and will become members of the FR Y–14A panel effective December 31, 2021. *See* 84 FR 59032 (November 1, 2019).

[36] The estimated number of respondents for the FR Y–14M is lower than for the FR Y–14Q and FR Y–14A because, in recent years, certain respondents to the FR Y–14A and FR Y–14Q have not met the materiality thresholds to report the FR Y–14M due to their lack of mortgage and credit activities. The Board expects this situation to continue for the foreseeable future.

Revisions: 17,280 hours; FR Y–14 Attestation On-going Attestation: 33,280 hours.

General description of report: This family of information collections is composed of the following three reports:

• The annual [37] FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.

• The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, trading assets, and pre-provision net revenue for the reporting period.

• The monthly FR Y–14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y–14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual CCAR and Dodd-Frank Act Stress Test (DFAST) exercises, which complement other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Respondent firms are currently required to complete and submit up to 17 filings each year: One annual FR Y–14A filing, four quarterly FR Y–14Q filings, and 12 monthly FR Y–14M filings. Compliance with the information collection is mandatory.

Current Actions: As previously described in this notice, the Board proposed to make several FR Y–14A/Q/M revisions. Certain revisions would only be applicable to firms subject to Category IV or Category I–III standards, while other revisions would be applicable to all BHCs, IHCs, and SLHCs. The Board has adopted all revisions as proposed, except that some revisions are effective for the December 31, 2020, as of date, and some are effective for the December 31, 2021, as of date.

Firms Subject to Category IV standards

As a result of the adopted changes to company-run stress testing requirements, the Board has no longer required that firms subject to Category IV standards report FR Y–14A Schedule A—Summary, Schedule B—Scenario, Schedule F—Business Plan Changes, and Appendix A—Supporting Documentation, which are used to report a firm's company-run stress test results. Firms subject to Category IV standards are no longer required to submit these schedules beginning with the December 31, 2020, as of date. However, firms subject to Category IV standards are still required to complete all remaining FR Y–14A schedules, as they are necessary for the Board to run its supervisory stress test. The Board believes that the detailed balance sheet information collected on a monthly and quarterly basis from firms subject to Category IV standards on the FR Y–14Q and FR Y–14M is crucial for maintaining the integrity of the stress tests, monitoring financial stability, and supervising those firms.

Firms Subject to Category I–III Standards

As previously outlined, firms subject to Category I—III standards are still required to report FR Y–14A, Schedule A—Summary. To conform the FR Y–14 reports with the stress test assumption changes made per the stress capital buffer rule, the Board has created two sub-schedules for all items on the FR Y–14A, Schedule A, effective for the December 31, 2020, as of date: (1) DFAST, where a firm would not incorporate the effects of material business plan changes and (2) CCAR, where a firm would incorporate the effects of business plan changes. Specifically, firms subject to Category I—III standards are required to report a version of FR Y–14A, Schedule A.1.a—Income Statement, Schedule A.1.b—Balance Sheet, Schedule A.1.c.1—Standardized RWA, Schedule A.1.d—Capital, Schedule A.2.a—Retail Balance and Loss, Schedule A.3—AFS/HTM Securities, Schedule A.4—Trading, Schedule A.5—Counterparty Credit Risk, Schedule A.6—Operational Risk, and Loss Projections, and Schedule A.7—Pre-Provision Net Revenue, that incorporates the effects of business plan changes, as well as a version of these schedules and items that does not incorporate the effects of material business plan changes. For Schedule A.1.d, firms subject to Category I—III standards are still required to report two sub-schedules with different capital actions, along with the income and balance sheet information reported in the appropriate sub-schedule. In addition, effective for the December 31, 2020, as of date, firms subject to Category I—III standards are only required to report FR Y–14A, Schedule F under the Internal baseline and supervisory severely adverse scenarios.

All BHCs and IHCs

All BHCs and IHCs are still required to report FR Y–14A, Schedule C—Regulatory Capital Instruments, and the stress test assumption changes made per the stress capital buffer rule create a need for firms to provide certain data excluding the impact of material business plan changes. As a result, the Board has created two sub-schedules for all items on the FR Y–14A, Schedule C: (1) SCB, where a firm does not incorporate the effects of material business plan changes and (2) CCAR, where a firm does incorporate the effects of business plan changes. Specifically, all BHCs and IHCs are required to report a version of FR Y–14A, Schedule C that incorporates the effects of material business plan changes, as well as a version of this schedule and items that does not incorporate these effects. These revisions are effective for the December 31, 2020, as of date.

In order to be able to assess whether a firm's planned capital distributions included in its capital plan are consistent with any effective capital distribution limitations that would apply under the firm's baseline projections, as required by the capital plan rule, the Board has added four items to FR Y–14A, Schedule C. These items capture baseline projections of a firm's common equity tier 1 capital ratio, tier 1 capital ratio, total capital ratio, and net income. These revisions are effective for the December 31, 2020, as of date.

SLHCs

In order to assess compliance with the stress testing and capital plan rules, the Board has required SLHCs subject to Category II, or III standards to submit FR Y–14A, Schedule B—Scenario, and has required SLHCs subject to Category II, III, or IV standards to submit FR Y–14A, Schedule C—Regulatory Capital Instruments. These revisions align with the spirit of the tailoring rule, as it would require all firms subject to

[37] In certain circumstances, a BHC, IHC, or SLHC may be required to re-submit its capital plan. *See* 12 CFR 225.8(e)(4); 12 CFR 238.170(e)(4). Firms that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

applicable Category standards to largely submit the same FR Y–14A information. These revisions are effective for the December 31, 2021, as of date.

Other Revisions

As previously mentioned, the Board has replaced the current definition of ''large and noncomplex bank holding company'' in the capital plan rule with the definition of a firm subject to Category IV standards. Therefore, the Board has made this change across the FR Y–14A/Q/M reports. In addition, to more accurately reflect the types of firms subject to the stress test reporting requirements, the Board has renamed the ''BHC baseline scenario'' and ''BHC stress scenario'' to ''Internal baseline scenario'' and ''Internal stress scenario,'' respectively. These revisions are effective for the December 31, 2020, as of date.

(2) *Report title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation LL.

Agency form number: FR LL.

OMB control number: 7100–0380.

Frequency: Biennial, annual.

Affected Public: Businesses or other for-profit.

Respondents: Savings and loan holding companies.

Estimated number of respondents: 1.

Estimated average hours per response:

Reporting

Section 238.132(c)(2)(ii)—0.25,
Section 238.162(b)(1)(ii)—80,
Section 238.170(e)(1)(ii)—80,
Section 238.170(e)(3)—1,005,
Section 238.170(e)(4)—100,
Section 238.170(h)(2)(ii)(B)—2,
Section 238.170(i)—16,
Section 238.170(j)(1) and (2)—100,
Section 238.170(j)(4)—16,

Recordkeeping

Section 238.170(e)(1)(i)—8,920,
Section 238.170(e)(1)(iii)—100,

Disclosure

Section 238.146 (initial setup)—150,
Section 238.146—60.

Estimated annual burden hours:

Reporting

Section 238.132(c)(2)(ii)—0,
Section 238.162(b)(1)(ii)—40,
Section 238.170(e)(1)(ii)—80,
Section 238.170(e)(3)—1,005,
Section 238.170(e)(4)—100,
Section 238.170(h)(2)(ii)(B)—2,
Section 238.170(i)—16,
Section 238.170(j)(1) and (2)—100,
Section 238.170(j)(4)—16,

Recordkeeping

Section 238.170(e)(1)(i)—8,920,
Section 238.170(e)(1)(iii)—100,

Disclosure

Section 238.146 (initial setup)—75,
Section 238.146—30.

Legal authorization and confidentiality: This information collection is authorized by section 10 of the Home Owners' Loan Act (HOLA) and section 165(i)(2) of the Dodd-Frank Act. The obligation of covered institutions to report this information is mandatory. This information would be disclosed publicly and, as a result, no issue of confidentiality is raised.

Current Actions: The final rule includes amendments to § 238.146 of Regulation LL meant to ensure that certain savings and loan holding companies are required to publicly disclose their stress tests results. Under the final rule, a covered savings and loan holding company that is subject to a supervisory stress test under § 238.132 of Regulation LL is required to publicly disclose a summary of the results of the stress test required under § 238.143 of Regulation LL within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to § 238.134 of Regulation LL, unless that time is extended by the Board in writing, while a covered savings and loan holding company that is not subject to a supervisory stress test under § 238.132 of Regulation LL is required to publicly disclose a summary of the results of the stress test required under § 238.143 of Regulation LL in the period beginning on June 15 and ending on June 30 in the year in which the stress test is conducted, unless that time is extended by the Board in writing.

Additionally, the final rule applies capital planning and stress capital buffer requirements to covered savings and loan holding companies subject to Category II, III, or IV standards. These savings and loan holding companies will be required to submit capital plans to the Board on an annual basis, and to request prior approval from the Board under certain circumstances before making a capital distribution.

The Board also has revised Regulation LL to permit a savings and loan holding company subject to Category IV standards to elect to participate in the supervisory stress test in a year in which the firm would not normally be subject to the supervisory stress test. To ensure the Board is provided sufficient notice that the firm is participating in the supervisory stress test, the firm would need to make its election by January 15 of the year in which it seeks to opt in to the supervisory stress test by providing written notice to the Board and appropriate Federal Reserve Bank.

(3) *Report title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (Enhanced Prudential Standards).

Agency Form Number: FR YY.

OMB Control Number: 7100–0350.

Frequency: Annual, semiannual, quarterly.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, nonbank financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign saving and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Estimated number of respondents: 23 U.S. bank holding companies with total consolidated assets of $100 billion or more, 4 U.S. bank holding companies with total consolidated assets of $50 billion or more but less than $100 billion, 1 state member bank with total consolidated assets over $250 billion, 11 U.S. intermediate holding companies with $100 billion or more in total assets, 23 foreign banking organizations with total consolidated assets of more than $50 billion but less than $100 billion; 23 foreign banking organizations with total consolidated assets of $100 billion or more but combined U.S. operations of at least $50 billion but less than $100 billion; 17 foreign banking organizations with total consolidated assets of $100 billion or more and combined U.S. operations of $100 billion or more.

Estimated annual burden hours: 27,752 hours.

General description of report: Section 165 of the Dodd-Frank Act, as amended by EGRRCPA, requires the Board to implement enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $250 billion or more, and provides the Board with discretion to apply enhanced prudential standards to certain bank holding companies and foreign banking organizations with $100 billion or more, but less than $250 billion, in total consolidated assets. The enhanced prudential standards include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability.

Current Actions: As described above, the Board has amended Regulation YY to allow a firm subject to Category IV standards to elect to participate in the supervisory stress test in a year in which the firm would not normally be subject to the supervisory stress test. To ensure the Board is provided sufficient notice that the firm is participating in the supervisory stress test, the firm would need to make its election by January 15 of the year in which it seeks to opt in to the supervisory stress test by providing written notice to the Board and appropriate Federal Reserve Bank. For purposes of calculating the stress capital buffer requirement in 2021 for a firm subject to Category IV standards that elects to participate in the 2021 supervisory stress test, the final rule includes transitional procedures such that the firm could notify the Board by April 5, 2021.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.[38] However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[39] For the reasons described below and under section 605(b) of the RFA, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities. As of December 31, 2019, there were 2,799 bank holding companies, 171 savings and loan holding companies, and 497 state member banks that would fit the SBA's current definition of ''small entity'' for purposes of the RFA.

In connection with the proposed rule, the Board stated that it did not believe the proposed rule would have a significant economic impact on a substantial number of small entities. Nevertheless, the Board published and invited comment on an initial regulatory flexibility analysis of the proposed rule. No comments were received on the initial regulatory flexibility analysis.

The Board is finalizing amendments to Regulations Q,[40] Y,[41] LL,[42] and YY[43] that would affect the regulatory requirements that apply to bank holding companies, intermediate holding companies and covered savings and loan holding companies with total consolidated assets of at least $100 billion in total consolidated assets and any nonbank financial company supervised by the Board that becomes subject to the capital planning requirements pursuant to a rule or order of the Board. The reasons and justification for the final rule are described above in more detail in this SUPPLEMENTARY INFORMATION.

The Board has considered whether to conduct a final regulatory flexibility analysis in connection with this final rule. However, the assets of institutions subject to this final rule substantially exceed the $600 million asset threshold under which a banking organization is considered a ''small entity'' under SBA regulations. Because the final rule is not likely to apply to any depository institution or company with assets of $600 million or less, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised.

C. Solicitation of Comments of 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 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 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

12 CFR Part 238

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Capital planning, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

Authority and Issuance

For the reasons stated in the SUPPLEMENTARY INFORMATION, chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

Subpart B—Capital Ratio Requirements and Buffer

■ 2. Amend § 217.11 by:

■ a. Revising paragraphs (a)(2)(iii) and (vi) and paragraphs (a)(3)(i) introductory text and (a)(4);

■ b. Revising the paragraph (c) subject heading and paragraphs (c)(1)(i) and (ii), (c)(1)(iii) introductory text, and (c)(1)(iv) introductory text, (c)(1)(v) introductory text, and (c)(vi) introductory text; and

■ c. Correctly designating the second occurrence of paragraph (c)(1)(v) as paragraph (c)(1)(vii); and

■ d. Revising paragraph (c)(2).

The revisions read as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

(a) * * *

(2) * * *

(iii) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that a Board-

[38] 5 U.S.C. 601 *et. seq.*

[39] *See* 13 CFR 121.201. Effective August 19, 2019, the SBA revised the size standards for certain banking organizations to $600 million in assets from $550 million in assets. *See* 84 FR 34261 (July 18, 2019). Consistent with the General Principles of Affiliation in 13 CFR 121.103, the Board counts the assets of all domestic and foreign affiliates when determining if the Board should classify a Board-supervised institution as a small entity.

[40] 12 CFR part 217.

[41] 12 CFR part 225.

[42] 12 CFR part 238.

[43] 12 CFR part 252.

regulated institution can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. For a Board-regulated institution that is not subject to 12 CFR 225.8 or 238.170, the maximum payout ratio is determined by the Board-regulated institution's capital conservation buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to paragraph (a)(4)(iv) of this section. For a Board-regulated institution that is subject to 12 CFR 225.8 or 238.170, the maximum payout ratio is determined under paragraph (c)(1)(ii) of this section.

* * * * *

(vi) *Stress capital buffer requirement.* (A) The stress capital buffer requirement for a Board-regulated institution subject to 12 CFR 225.8 or 238.170 is the stress capital buffer requirement determined under 12 CFR 225.8 or 238.170 except as provided in paragraph (a)(2)(vi)(B) of this section.

(B) If a Board-regulated institution subject to 12 CFR 225.8 or 238.170 has not yet received a stress capital buffer requirement, its stress capital buffer requirement for purposes of this part is 2.5 percent.

(3) * * *

(i) A Board-regulated institution that is not subject to 12 CFR 225.8 or 238.170 has a capital conservation buffer equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

* * * * *

(4) *Limits on distributions and discretionary bonus payments.* (i) A Board-regulated institution that is not subject 12 CFR 225.8 or 238.170 shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed its maximum payout amount.

(ii) A Board-regulated institution that is not subject 12 CFR 225.8 or 238.170 and that has a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer amount in accordance with paragraph (b) of this section is not subject to a maximum payout amount under paragraph (a)(2)(ii) of this section.

(iii) Except as provided in paragraph (a)(4)(iv) of this section, a Board-regulated institution that is not subject to 12 CFR 225.8 or 238.170 may not make distributions or discretionary bonus payments during the current calendar quarter if the Board-regulated institution's:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent as of the end of the previous calendar quarter.

(iv) Prior approval—notwithstanding the limitations in paragraphs (a)(4)(i) through (iii) of this section, the Board may permit a Board-regulated institution that is not subject to 12 CFR 225.8 or 238.170 to make a distribution or discretionary bonus payment upon a request of the Board-regulated institution, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the Board-regulated institution. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO § 217.11(a)(4)(iv)—CALCULATION OF MAXIMUM PAYOUT AMOUNT

Capital conservation buffer	Maximum payout ratio
Greater than 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount, *and* greater than 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount, *and* greater than 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount *and* greater than 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount.	0 percent.

(v) *Other limitations on distributions.* Additional limitations on distributions may apply under 12 CFR 225.4 and 263.202 to a Board-regulated institution that is not subject to 12 CFR 225.8 or 238.170.

* * * * *

(c) *Calculation of buffers for Board-regulated institutions subject to 12 CFR 225.8 or 238.170*—

(1) * * *

(i) A Board-regulated institution that is subject to 12 CFR 225.8 or 238.170 shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed its maximum payout amount.

(ii) *Maximum payout ratio.* The maximum payout ratio of a Board-regulated institution that is subject to 12 CFR 225.8 or 238.170 is the lowest of the payout ratios determined by its standardized approach capital conservation buffer; if applicable, advanced approaches capital conservation buffer; and, if applicable, leverage buffer; as set forth in table 2 to § 217.11(c)(4)(iii).

(iii) *Capital conservation buffer requirements.* A Board-regulated institution that is subject to 12 CFR 225.8 or 238.170 has:

* * * * *

(iv) *No maximum payout amount limitation.* A Board-regulated institution that is subject to 12 CFR 225.8 or 238.170 is not subject to a maximum payout amount under paragraph (a)(2)(ii) of this section if it has:

* * * * *

(v) *Negative eligible retained income.* Except as provided in paragraph (c)(1)(vi) of this section, a Board-regulated institution that is subject to 12 CFR 225.8 or 238.170 may not make distributions or discretionary bonus payments during the current calendar quarter if, as of the end of the previous calendar quarter, the Board-regulated institution's:

* * * * *

(vi) *Prior approval.* Notwithstanding the limitations in paragraphs (c)(1)(i) through (v) of this section, the Board may permit a Board-regulated institution that is subject to 12 CFR 225.8 or 238.170 to make a distribution or discretionary bonus payment upon a request of the Board-regulated institution, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the Board-regulated institution. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

(vii) *Other limitations on distributions.* Additional limitations on distributions may apply under 12 CFR 225.4, 225.8, 238.170, 252.63, 252.165, and 263.202 to a Board-regulated institution that is subject to 12 CFR 225.8 or 238.170.

(2) *Standardized approach capital conservation buffer.* (i) The standardized approach capital conservation buffer for Board-regulated institutions subject to 12 CFR 225.8 or 238.170 is composed solely of common equity tier 1 capital.

(ii) A Board-regulated institution that is subject to 12 CFR 225.8 or 238.170 has a standardized approach capital conservation buffer that is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 3. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

■ 4. Amend § 225.8 by:
■ a. Revising paragraphs (c)(1) and (2) and (d)(3) through (21);
■ b. Removing paragraph (d)(22),
■ c. Revising paragraphs (e)(2)(i)(A) and (e)(4)(i)(B)(*3*);
■ d. Removing paragraph (e)(4)(i)(B)(4);
■ e. Revising paragraphs (e)(4)(ii) and (iii);
■ f. Removing paragraph (e)(4)(iv);
■ g. Revising paragraph (f)(1);
■ h. Adding paragraph (f)(4);
■ i. Revising paragraphs (h)(2) through (5), (i), (j), and (k); and
■ j. Removing paragraph (l).

The revisions and additions read as follows:

§ 225.8 Capital planning and stress capital buffer requirement.

* * * * *

(c) * * *

(1) A bank holding company that meets the $100 billion asset threshold (as measured under paragraph (b) of this section) on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing. Notwithstanding the previous sentence, the Board will not provide a bank holding company with notice of its stress capital buffer requirement until the first year in which the Board conducts an analysis of the bank holding company pursuant to 12 CFR 252.44.

(2) A bank holding company that meets the $100 billion asset threshold after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the bank holding company meets the $100 billion asset threshold, unless that time is extended by the Board in writing. Notwithstanding the previous sentence, the Board will not provide a bank holding company with notice of its stress capital buffer requirement until the first year in which the Board conducts an analysis of the bank holding company pursuant to 12 CFR 252.44.

* * * * *

(d) * * *

(3) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital.

(4) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.

(5) *Capital plan* means a written presentation of a bank holding company's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (e)(2) of this section.

(6) C*apital plan cycle* means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

(7) *Capital policy* means a bank holding company's written principles and guidelines used for capital planning, capital issuance, capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(8) *Category IV bank holding company* means any bank holding company or U.S. intermediate holding company subject to this section that, as of December 31 of the prior capital plan cycle, is a Category IV banking organization pursuant to 12 CFR 252.5.

(9) *Common equity tier 1 capital* has the same meaning as under 12 CFR part 217.

(10) *Effective capital distribution limitations* means any limitations on capital distributions established by the Board by order or regulation, including pursuant to 12 CFR 217.11, 225.4, 252.63, 252.165, and 263.202, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in 12 CFR part 217, subpart D.

(11) *Final planned capital distributions* means the planned capital distributions included in a capital plan that include the adjustments made pursuant to paragraph (h) of this section, if any.

(12) *GSIB surcharge* has the same meaning as under 12 CFR 217.403.

(13) *Internal baseline scenario* means a scenario that reflects the bank holding company's expectation of the economic and financial outlook, including expectations related to the bank holding company's capital adequacy and financial condition.

(14) *Internal stress scenario* means a scenario designed by a bank holding company that stresses the specific vulnerabilities of the bank holding company's risk profile and operations, including those related to the bank holding company's capital adequacy and financial condition.

(15) *Nonbank financial company supervised by the Board* means a company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(16) *Planning horizon* means the period of at least nine consecutive quarters, beginning with the quarter preceding the quarter in which the bank holding company submits its capital plan, over which the relevant projections extend.

(17) *Regulatory capital ratio* means a capital ratio for which the Board has established minimum requirements for the bank holding company by regulation or order, including, as applicable, the bank holding company's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the bank holding company shall not use the advanced approaches to calculate its regulatory capital ratios.

(18) *Severely adverse scenario* has the same meaning as under 12 CFR part 252, subpart E.

(19) *Stress capital buffer requirement* means the amount calculated under paragraph (f) of this section.

(20) *Supervisory stress test* means a stress test conducted using a severely adverse scenario and the assumptions contained in 12 CFR part 252, subpart E.

(21) *U.S. intermediate holding company* means the top-tier U.S. company that is required to be established pursuant to 12 CFR 252.153.

(e) * * *

(2) * * *

(i) * * *

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under a range of scenarios, including:

(*1*) If the bank holding company is a Category IV bank holding company, the Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios, based on financial conditions or the macroeconomic outlook, or based on the bank holding company's financial condition, size, complexity, risk profile, or activities, or risks to the U.S. economy, that the Federal Reserve may provide the bank holding company after giving notice to the bank holding company; or

(*2*) If the bank holding company is not a Category IV bank holding company, any scenarios provided by the Federal Reserve, the Internal baseline scenario, and at least one Internal stress scenario;

* * * * *

(4) * * *

(i) * * *

(B) * * *

(*3*) The Internal stress scenario(s) are not appropriate for the bank holding company's business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on a bank holding company's risk profile and financial condition require the use of updated scenarios; or

* * * * *

(ii) The Board, or the appropriate Reserve Bank with concurrence of the Board, may extend the 30-day period in paragraph (e)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, a bank holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

* * * * *

(f) * * *

(1) *General.* The Board will determine the stress capital buffer requirement that applies under 12 CFR 217.11 pursuant to this paragraph (f). For each bank holding company that is not a Category IV bank holding company, the Board will calculate the bank holding company's stress capital buffer requirement annually. For each Category IV bank holding company, the Board will calculate the bank holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an even number, and will adjust the bank holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an odd number. Notwithstanding the previous sentence, the Board will calculate the stress capital buffer requirement of a Category IV bank holding company in a year ending in an odd number with respect to which that company makes an election pursuant to 12 CFR 252.44(d)(2)(ii).

* * * * *

(4) *Adjustment of stress capital buffer requirement.* In each calendar year in which the Board does not calculate a Category IV bank holding company's stress capital buffer requirement pursuant to paragraph (f)(1) of this section, the Board will adjust the Category IV bank holding company's stress capital buffer requirement to be equal to the result of the calculation set forth in paragraph (f)(2) of this section, using the same values that were used to calculate the stress capital buffer requirement most recently provided to the bank holding company, except that the value used in paragraph (f)(2)(i)(C)(*1*) of this section will be equal to the bank holding company's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon as set forth in the capital plan submitted by the bank holding company in the calendar year in which the Board adjusts the bank holding company's stress capital buffer requirement.

(h) * * *

(2) *Response to notice*—(i) *Request for reconsideration of stress capital buffer requirement.* A bank holding company may request reconsideration of a stress capital buffer requirement provided under paragraph (h)(1) of this section. To request reconsideration of a stress capital buffer requirement, a bank holding company must submit to the Board a request pursuant to paragraph (i) of this section.

(ii) *Adjustments to planned capital distributions.* Within two business days of receipt of notice of a stress capital buffer requirement under paragraph (h)(1) or (i)(5) of this section, as applicable, a bank holding company must:

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; and

(*1*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would not be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the bank holding company must adjust its planned capital distributions such that its planned capital distributions would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; or

(*2*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the bank holding company may adjust its planned capital distributions. A bank holding company may not adjust its planned capital distributions to be inconsistent with the effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable; and

(B) Notify the Board of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario.

(3) *Final planned capital distributions.* The Board will consider the planned capital distributions, including any adjustments made pursuant to paragraph (h)(2)(ii) of this section, to be the bank holding company's final planned capital distributions on the later of:

(i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and

(ii) The expiration of the time for adjusting planned capital distributions pursuant to paragraph (h)(2)(ii) of this section.

(4) *Effective date of final stress capital buffer requirement.* (i) The Board will provide a bank holding company with its final stress capital buffer requirement and confirmation of the bank holding company's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section, unless otherwise determined by the Board. A stress capital buffer requirement will not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration made pursuant to paragraph (i) of this section or before the time for requesting reconsideration has expired.

(ii) Unless otherwise determined by the Board, a bank holding company's final planned capital distributions and final stress capital buffer requirement shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5) *Publication.* With respect to any bank holding company subject to this section, the Board may disclose publicly any or all of the following:

(i) The stress capital buffer requirement provided to a bank holding company under paragraph (h)(1) or (i)(5) of this section;

(ii) Adjustments made pursuant to paragraph (h)(2)(ii);

(iii) A summary of the results of the supervisory stress test; and

(iv) Other information.

(i) *Administrative remedies; request for reconsideration.* The following requirements and procedures apply to any request under this paragraph (i):

(1) *General.* To request reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, a bank holding company must submit a written request for reconsideration.

(2) *Timing of request.* A request for reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, must be received within 15 calendar days of receipt of a notice of a bank holding company's stress capital buffer requirement.

(3) *Contents of request.* (i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted (that is, why a stress capital buffer requirement should be reconsidered). With respect to any information that was not previously provided to the Federal Reserve in the bank holding company's capital plan, the request should include an explanation of why the information should be considered.

(ii) A request for reconsideration may include a request for an informal hearing on the bank holding company's request for reconsideration.

(4) *Hearing.* (i) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(5) *Response to request.* Within 30 calendar days of receipt of the bank holding company's request for reconsideration of its stress capital buffer requirement submitted under paragraph (i)(2) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (i)(4) of this section, the Board will notify the company of its decision to affirm or modify the bank holding company's stress capital buffer requirement, provided that the Board may extend this period upon notice to the bank holding company.

(6) *Distributions during the pendency of a request for reconsideration.* During the pendency of the Board's decision under paragraph (i)(5) of this section, the bank holding company may make capital distributions that are consistent with effective distribution limitations, unless prior approval is required under paragraph (j)(1) of this section.

(j) *Approval requirements for certain capital actions*—(1) *Circumstances requiring approval—Resubmission of a capital plan.* Unless it receives prior approval pursuant to paragraph (j)(3) of this section, a bank holding company may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (e)(4)(i)(A) or (B) of this section.

(2) *Contents of request.* A request for a capital distribution under this section must contain the following information:

(i) The bank holding company's capital plan or a discussion of changes to the bank holding company's capital plan since it was last submitted to the Federal Reserve;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the bank holding company's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3) *Approval of certain capital distributions.* (i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will act on a request for prior approval of a capital distribution within 30 calendar days after the receipt of all the information required under paragraph (j)(2) of this section.

(ii) In acting on a request for prior approval of a capital distribution, the Board, or appropriate Reserve Bank with concurrence of the Board, will apply the considerations and principles in paragraph (g) of this section, as appropriate. In addition, the Board, or the appropriate Reserve Bank with concurrence of the Board, may disapprove the transaction if the bank holding company does not provide all of the information required to be submitted under paragraph (j)(2) of this section.

(4) *Disapproval and hearing.* (i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by the Board, the bank holding company may submit a written request for a hearing.

(ii) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of the Board shall be given to the bank holding company within 60 calendar days of the conclusion of any informal hearing ordered by the Board, provided that the Board may extend this period upon notice to the requesting party.

(iv) While the Board's decision is pending and until such time as the Board, or the appropriate Reserve Bank with concurrence of the Board, approves the capital distribution at issue, the bank holding company may not make such capital distribution.

(k) *Post notice requirement.* A bank holding company must notify the Board and the appropriate Reserve Bank within 15 days of making a capital distribution if:

(1) The capital distribution was approved pursuant to paragraph (j)(3) of this section; or

(2) The dollar amount of the capital distribution will exceed the dollar amount of the bank holding company's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 5. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 5365; 1813, 1817, 1829e, 1831i, 1972, 15 U.S.C. 78*l.*

Subpart O—Supervisory Stress Test Requirements for Covered Savings and Loan Holding Companies

■ 6. Amend § 238.132 by adding paragraph (a)(4), revising paragraph (c)(2), and adding paragraph (d) to read as follows:

§ 238.132 Analysis conducted by the Board.

(a) * * *

(4) In conducting the analysis, the Board will not incorporate changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile in its projections of losses, net income, pro forma capital levels, and capital ratios.

* * * * *

(c) * * *

(2) *Change in frequency.* (i) The Board may conduct a stress test of a covered company on a more or less frequent basis than would be required under paragraph (c)(1) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(ii) A Category IV savings and loan holding company may elect to have the Board conduct a stress test with respect to the company in a year ending in an odd number by providing notice to the Board and the appropriate Federal Reserve Bank by January 15 of that year.

* * * * *

(d) *Capital Action Assumptions.* In conducting a stress test under this section, the Board will make the following assumptions regarding a covered company's capital actions over the planning horizon:

(1) The covered company will not pay any dividends on any instruments that qualify as common equity tier 1 capital;

(2) The covered company will make payments on instruments that qualify as additional tier 1 capital or tier 2 capital equal to the stated dividend, interest, or principal due on such instrument;

(3) The covered company will not make a redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and

(4) The covered company will not make any issuances of common stock or preferred stock.

Subpart P—Company-Run Stress Test Requirements for Savings and Loan Holding Companies

■ 7. Amend § 238.144 by revising paragraphs (a)(2) and (b)(1) and (2) and adding paragraphs (b)(3) and (4) to read as follows:

§ 238.144 Methodologies and practices.

(a) * * *

(2) The potential impact on pro forma regulatory capital levels and pro forma capital ratios (including regulatory capital ratios and any other capital ratios specified by the Board), and in so doing must:

(i) Incorporate the effects of any capital actions over the planning horizon and maintenance of an allowance for credit losses appropriate for credit exposures throughout the planning horizon; and

(ii) Exclude the impacts of changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile.

(b) * * *

(1) The covered company will not pay any dividends on any instruments that qualify as common equity tier 1 capital;

(2) The covered company will make payments on instruments that qualify as additional tier 1 capital or tier 2 capital equal to the stated dividend, interest, or principal due on such instrument;

(3) The covered company will not make a redemption or repurchase of any capital instrument that is eligible for inclusion in the numerator of a regulatory capital ratio; and

(4) The covered company will not make any issuances of common stock or preferred stock.

* * * * *

■ 8. Amend § 238.146 by revising paragraph (a)(1) to read as follows:

§ 238.146 Disclosure of stress test results.

(a) *Public disclosure of results*—(1) *In general.* (i) A covered company that is subject to a supervisory stress test under 12 CFR 238.132 must publicly disclose a summary of the results of the stress test required under § 238.143 within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to § 238.134, unless that time is extended by the Board in writing; and

(ii) A covered company that is not subject to a supervisory stress test under § 238.132 must publicly disclose a summary of the results of the stress test required under § 238.143 in the period beginning on June 15 and ending on June 30 in the year in which the stress test is conducted, unless that time is extended by the Board in writing.

* * * * *

■ 9. Add Subpart S, consisting of § 238.170, to read as follows:

Subpart S—Capital Planning and Stress Capital Buffer Requirement

§ 238.170 Capital planning and stress capital buffer requirement.

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by certain savings and loan holding companies. This section also establishes the Board's process for determining the stress capital buffer requirement applicable to these savings and loan holding companies.

(b) *Scope and reservation of authority*—(1) *Applicability.* Except as provided in § 238.170(c), this section applies to:

(i) Any top-tier covered savings and loan holding company domiciled in the United States with average total consolidated assets of $100 billion or more ($100 billion asset threshold); and

(ii) Any other covered savings and loan holding company domiciled in the United States that is made subject to this section, in whole or in part, by order of the Board.

(2) *Average total consolidated assets.* For purposes of this section, average total consolidated assets means the average of the total consolidated assets as reported by a covered savings and loan holding company on its Consolidated Financial Statements for Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the covered savings and loan holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(3) *Ongoing applicability.* A covered savings and loan holding company (including any successor covered savings and loan holding company) that is subject to any requirement in this section shall remain subject to such requirements unless and until its total consolidated assets fall below $100 billion for each of four consecutive quarters, as reported on the FR Y–9C and effective on the as-of date of the fourth consecutive FR Y–9C.

(4) *Reservation of authority.* Nothing in this section shall limit the authority of the Federal Reserve to issue or enforce a capital directive or take any other supervisory or enforcement action, including an action to address unsafe or unsound practices or conditions or violations of law.

(5) *Application of this section by order.* The Board may apply this section, in whole or in part, to a covered savings and loan holding company by order based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(c) *Transition periods for certain covered savings and loan holding companies.* (1) A covered savings and loan holding company that meets the $100 billion asset threshold (as measured under paragraph (b) of this section) on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing. Notwithstanding the previous sentence, the Board will not provide a covered savings and loan holding company with notice of its stress capital buffer requirement until the first year in which the Board conducts an analysis of the covered savings and loan company pursuant to 12 CFR 238.132.

(2) A covered savings and loan holding company that meets the $100 billion asset threshold after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the covered savings and loan holding company meets the $100 billion asset threshold, unless that time is extended by the Board in writing. Notwithstanding the previous sentence, the Board will not provide a covered savings and loan holding company with notice of its stress capital buffer requirement until the first year in which the Board conducts an analysis of the covered savings and loan holding company pursuant to 12 CFR 238.132.

(3) The Board, or the appropriate Reserve Bank with the concurrence of the Board, may require a covered savings and loan holding company described in paragraph (c)(1) or (2) of this section to comply with any or all of the requirements of this section if the Board, or appropriate Reserve Bank with concurrence of the Board, determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition and provides prior notice to the company of the determination.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable.

(2) *Average total nonbank assets* means the average of the total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP, for the four most recent calendar quarters or, if the covered savings and loan holding company has not filed the FR Y–9LP for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable.

(3) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a covered savings and loan holding company's consolidated capital.

(4) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.

(5) *Capital plan* means a written presentation of a covered savings and loan holding company's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (e)(2) of this section.

(6) *Capital plan cycle* means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

(7) *Capital policy* means a covered savings and loan holding company's written principles and guidelines used for capital planning, capital issuance, capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(8) *Category IV savings and loan holding company* means a covered savings and loan holding company identified as a Category IV banking organization pursuant to 12 CFR 238.10.

(9) *Common equity tier 1 capital* has the same meaning as under 12 CFR part 217.

(10) *Effective capital distribution limitations* means any limitations on capital distributions established by the Board by order or regulation, including pursuant to 12 CFR 217.11, provided that, for any limitations based on risk-weighted assets, such limitations must be calculated using the standardized approach, as set forth in 12 CFR part 217, subpart D.

(11) *Final planned capital distributions* means the planned capital

distributions included in a capital plan that include the adjustments made pursuant to paragraph (h) of this section, if any.

(12) *Internal baseline scenario* means a scenario that reflects the covered savings and loan holding company's expectation of the economic and financial outlook, including expectations related to the covered saving and loan holding company's capital adequacy and financial condition.

(13) *Internal stress scenario* means a scenario designed by a covered savings and loan holding company that stresses the specific vulnerabilities of the covered savings and loan holding company's risk profile and operations, including those related to the covered savings and loan holding company's capital adequacy and financial condition.

(14) *Planning horizon* means the period of at least nine consecutive quarters, beginning with the quarter preceding the quarter in which the covered savings and loan holding company submits its capital plan, over which the relevant projections extend.

(15) *Regulatory capital ratio* means a capital ratio for which the Board has established minimum requirements for the covered savings and loan holding company by regulation or order, including, as applicable, the covered savings and loan holding company's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the covered savings and loan holding company shall not use the advanced approaches to calculate its regulatory capital ratios.

(16) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

(17) *Stress capital buffer requirement* means the amount calculated under paragraph (f) of this section.

(18) *Supervisory stress test* means a stress test conducted using a severely adverse scenario and the assumptions contained in 12 CFR part 238, subpart O.

(e) *Capital planning requirements and procedures*—(1) *Annual capital planning.* (i) A covered savings and loan holding company must develop and maintain a capital plan.

(ii) A covered savings and loan holding company must submit its complete capital plan to the Board and the appropriate Reserve Bank by April 5 of each calendar year, or such later date as directed by the Board or by the appropriate Reserve Bank with concurrence of the Board.

(iii) The covered savings and loan holding company's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (e)(1)(ii) of this section:

(A) Review the robustness of the covered savings and loan holding company's process for assessing capital adequacy;

(B) Ensure that any deficiencies in the covered savings and loan holding company's process for assessing capital adequacy are appropriately remedied; and

(C) Approve the covered savings and loan holding company's capital plan.

(2) *Mandatory elements of capital plan.* A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the covered savings and loan holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including regulatory capital ratios, and any additional capital measures deemed relevant by the covered savings and loan holding company, over the planning horizon under a range of scenarios, including:

(*1*) If the covered savings and loan holding company is a Category IV savings and loan holding company, the Internal baseline scenario and at least one Internal stress scenario, as well as any additional scenarios, based on financial conditions or the macroeconomic outlook, or based on the covered savings and loan holding company's financial condition, size, complexity, risk profile, or activities, or risks to the U.S. economy, that the Federal Reserve may provide the covered savings and loan holding company after giving notice to the covered savings and loan holding company; or

(*2*) If the covered savings and loan holding company is not a Category IV savings and loan holding company, any scenarios provided by the Federal Reserve, the Internal baseline scenario, and at least one Internal stress scenario;

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon. Planned capital actions must be consistent with effective capital distribution limitations, except as may be adjusted pursuant to paragraph (h) of this section. In determining whether a covered savings and loan holding company's planned capital distributions are consistent with effective capital distribution limitations, a covered savings and loan holding company must assume that any countercyclical capital buffer amount currently applicable to the covered savings and loan holding company remains at the same level, except that the covered savings and loan holding company must reflect any increases or decreases in the countercyclical capital buffer amount that have been announced by the Board at the times indicated by the Board's announcement for when such increases or decreases will take effect.

(ii) A detailed description of the covered savings and loan holding company's process for assessing capital adequacy, including:

(A) A discussion of how the covered savings and loan holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the regulatory capital ratios, and serve as a source of strength to its subsidiary depository institutions;

(B) A discussion of how the covered savings and loan holding company will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The covered savings and loan holding company's capital policy; and

(iv) A discussion of any expected changes to the covered savings and loan holding company's business plan that are likely to have a material impact on the covered savings and loan holding company's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of the Board or appropriate Reserve Bank, the covered savings and loan holding company shall provide the Federal Reserve with information regarding:

(i) The covered savings and loan holding company's financial condition, including its capital;

(ii) The covered savings and loan holding company's structure;

(iii) Amount and risk characteristics of the covered savings and loan holding company's on- and off-balance sheet exposures, including exposures within the covered savings and loan holding company's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The covered savings and loan holding company's relevant policies and procedures, including risk management policies and procedures;

(v) The covered savings and loan holding company's liquidity profile and management;

(vi) The loss, revenue, and expense estimation models used by the covered savings and loan holding company for stress scenario analysis, including supporting documentation regarding each model's development and validation; and

(vii) Any other relevant qualitative or quantitative information requested by the Board or by the appropriate Reserve Bank to facilitate review of the covered savings and loan holding company's capital plan under this section.

(4) *Resubmission of a capital plan.* (i) A covered savings and loan holding company must update and resubmit its capital plan to the appropriate Reserve Bank within 30 calendar days of the occurrence of one of the following events:

(A) The covered savings and loan holding company determines there has been or will be a material change in the covered savings and loan holding company's risk profile, financial condition, or corporate structure since the covered savings and loan holding company last submitted the capital plan to the Board and the appropriate Reserve Bank under this section; or

(B) The Board, or the appropriate Reserve Bank with concurrence of the Board, directs the covered savings and loan holding company in writing to revise and resubmit its capital plan for any of the following reasons:

(*1*) The capital plan is incomplete or the capital plan, or the covered savings and loan holding company's internal capital adequacy process, contains material weaknesses;

(*2*) There has been, or will likely be, a material change in the covered savings and loan holding company's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(*3*) The Internal stress scenario(s) are not appropriate for the covered savings and loan holding company's business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on a covered savings and loan holding company's risk profile and financial condition require the use of updated scenarios; or

(ii) The Board, or the appropriate Reserve Bank with concurrence of the Board, may extend the 30-day period in paragraph (e)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines appropriate.

(iii) Any updated capital plan must satisfy all the requirements of this section; however, a covered savings and loan holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(5) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

(f) *Calculation of the stress capital buffer requirement*—(1) *General.* The Board will determine the stress capital buffer requirement that applies under 12 CFR 217.11 pursuant to paragraph (f) of this section. For each covered savings and loan holding company that is not a Category IV savings and loan holding company, the Board will calculate the covered savings and loan holding company's stress capital buffer requirement annually. For each Category IV savings and loan holding company, the Board will calculate the covered savings and loan holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an even number, and will adjust the covered savings and loan holding company's stress capital buffer requirement biennially, occurring in each calendar year ending in an odd number. Notwithstanding the previous sentence, the Board will calculate the stress capital buffer requirement of a Category IV savings and loan holding company in a year ending in an odd number with respect to which that company makes an election pursuant to 12 CFR 238.132(c)(2)(ii).

(2) *Stress capital buffer requirement calculation.* A covered savings and loan holding company's stress capital buffer requirement is equal to the greater of:

(i) The following calculation:

(A) The ratio of a covered savings and loan holding company's common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, as of the final quarter of the previous capital plan cycle, unless otherwise determined by the Board; minus

(B) The lowest projected ratio of the covered savings and loan holding company's common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, in any quarter of the planning horizon under a supervisory stress test; plus

(C) The ratio of:

(*1*) The sum of the covered savings and loan holding company's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon; to

(*2*) The risk-weighted assets of the covered savings and loan holding company in the quarter in which the covered savings and loan holding company had its lowest projected ratio of common equity tier 1 capital to risk-weighted assets, as calculated under 12 CFR part 217, subpart D, in any quarter of the planning horizon under a supervisory stress test; and

(ii) 2.5 percent.

(3) *Recalculation of stress capital buffer requirement.* If a covered savings and loan holding company resubmits its capital plan pursuant to paragraph (e)(4) of this section, the Board may recalculate the covered savings and loan holding company's stress capital buffer requirement. The Board will provide notice of whether the covered savings and loan holding company's stress capital buffer requirement will be recalculated within 75 calendar days after the date on which the capital plan is resubmitted, unless the Board provides notice to the company that it is extending the time period.

(4) *Adjustment of stress capital buffer requirement.* In each calendar year in which the Board does not calculate a Category IV savings and loan holding company's stress capital buffer requirement pursuant to paragraph (f)(1) of this section, the Board will adjust the Category IV savings and loan holding company's stress capital buffer requirement to be equal to the result of the calculation set forth in paragraph (f)(2) of this section, using the same values that were used to calculate the stress capital buffer requirement most recently provided to the covered savings and loan holding company, except that the value used in paragraph (f)(2)(i)(C)(*1*) of the calculation will be equal to the covered savings and loan holding company's planned common stock dividends (expressed as a dollar amount) for each of the fourth through seventh quarters of the planning horizon

as set forth in the capital plan submitted by the covered savings and loan holding company in the calendar year in which the Board adjusts the covered savings and loan holding company's stress capital buffer requirement.

(g) *Review of capital plans by the Federal Reserve.* The Board, or the appropriate Reserve Bank with concurrence of the Board, will consider the following factors in reviewing a covered savings and loan holding company's capital plan:

(1) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the covered savings and loan holding company and the covered savings and loan holding company's capital policy;

(2) The reasonableness of the covered savings and loan holding company's capital plan, the assumptions and analysis underlying the capital plan, and the robustness of its capital adequacy process;

(3) Relevant supervisory information about the covered savings and loan holding company and its subsidiaries;

(4) The covered savings and loan holding company's regulatory and financial reports, as well as supporting data that would allow for an analysis of the covered savings and loan holding company's loss, revenue, and reserve projections;

(5) The results of any stress tests conducted by the covered savings and loan holding company or the Federal Reserve; and

(6) Other information requested or required by the Board or the appropriate Reserve Bank, as well as any other information relevant, or related, to the savings and loan holding company's capital adequacy.

(h) *Federal Reserve notice of stress capital buffer requirement; final planned capital distributions*—(1) *Notice.* The Board will provide a covered savings and loan holding company with notice of its stress capital buffer requirement and an explanation of the results of the supervisory stress test. Unless otherwise determined by the Board, notice will be provided by June 30 of the calendar year in which the capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section or within 90 calendar days of receiving notice that the Board will recalculate the covered savings and loan holding company's stress capital buffer requirement pursuant to paragraph (f)(3) of this section.

(2) *Response to notice*—(i) *Request for reconsideration of stress capital buffer requirement.* A covered savings and loan holding company may request reconsideration of a stress capital buffer requirement provided under paragraph (h)(1) of this section. To request reconsideration of a stress capital buffer requirement, a covered savings and loan holding company must submit to the Board a request pursuant to paragraph (i) of this section.

(ii) *Adjustments to planned capital distributions.* Within two business days of receipt of notice of a stress capital buffer requirement under paragraph (h)(1) or (i)(5) of this section, as applicable, a covered savings and loan holding company must:

(A) Determine whether the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; and

(*1*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would not be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the covered savings and loan holding company must adjust its planned capital distributions such that its planned capital distributions would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect; or

(*2*) If the planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario would be consistent with effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable, in place of any stress capital buffer requirement in effect, the covered savings and loan holding company may adjust its planned capital distributions. A covered savings and loan holding company may not adjust its planned capital distributions to be inconsistent with the effective capital distribution limitations assuming the stress capital buffer requirement provided by the Board under paragraph (h)(1) or (i)(5) of this section, as applicable; and

(B) Notify the Board of any adjustments made to planned capital distributions for the fourth through seventh quarters of the planning horizon under the Internal baseline scenario.

(3) *Final planned capital distributions.* The Board will consider the planned capital distributions, including any adjustments made pursuant to paragraph (h)(2)(ii) of this section, to be the covered savings and loan holding company's final planned capital distributions on the later of:

(i) The expiration of the time for requesting reconsideration under paragraph (i) of this section; and

(ii) The expiration of the time for adjusting planned capital distributions pursuant to paragraph (h)(2)(ii) of this section.

(4) *Effective date of final stress capital buffer requirement.* (i) The Board will provide a savings and loan holding company with its final stress capital buffer requirement and confirmation of the covered savings and loan holding company's final planned capital distributions by August 31 of the calendar year that a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section, unless otherwise determined by the Board. A stress capital buffer requirement will not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704 during the pendency of a request for reconsideration made pursuant to paragraph (i) of this section or before the time for requesting reconsideration has expired.

(ii) Unless otherwise determined by the Board, a covered savings and loan holding company's final planned capital distributions and final stress capital buffer requirement shall:

(A) Be effective on October 1 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section; and

(B) Remain in effect until superseded.

(5) *Publication.* With respect to any covered savings and loan holding company subject to this section, the Board may disclose publicly any or all of the following:

(i) The stress capital buffer requirement provided to a covered savings and loan holding company under paragraph (h)(1) or (i)(5) of this section;

(ii) Adjustments made pursuant to paragraph (h)(2)(ii);

(iii) A summary of the results of the supervisory stress test; and

(iv) Other information.

(i) *Administrative remedies; request for reconsideration.* The following requirements and procedures apply to any request under this paragraph (i):

(1) *General.* To request reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, a covered savings and loan holding company must submit a written request for reconsideration.

(2) *Timing of request.* A request for reconsideration of a stress capital buffer requirement, provided under paragraph (h) of this section, must be received within 15 calendar days of receipt of a notice of a covered savings and loan holding company's stress capital buffer requirement.

(3) *Contents of request.* (i) A request for reconsideration must include a detailed explanation of why reconsideration should be granted (that is, why a stress capital buffer requirement should be reconsidered). With respect to any information that was not previously provided to the Federal Reserve in the covered savings and loan holding company's capital plan, the request should include an explanation of why the information should be considered.

(ii) A request for reconsideration may include a request for an informal hearing on the covered savings and loan holding company's request for reconsideration.

(4) *Hearing.* (i) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(ii) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(5) *Response to request.* Within 30 calendar days of receipt of the covered savings and loan holding company's request for reconsideration of its stress capital buffer requirement submitted under paragraph (i)(2) of this section or within 30 days of the conclusion of an informal hearing conducted under paragraph (i)(4) of this section, the Board will notify the company of its decision to affirm or modify the covered savings and loan holding company's stress capital buffer requirement, provided that the Board may extend this period upon notice to the covered savings and loan holding company.

(6) *Distributions during the pendency of a request for reconsideration.* During the pendency of the Board's decision under paragraph (i)(5) of this section, the covered savings and loan holding company may make capital distributions that are consistent with effective distribution limitations, unless prior approval is required under paragraph (j)(1) of this section.

(j) *Approval requirements for certain capital actions*—(1) *Circumstances requiring approval—Resubmission of a capital plan.* Unless it receives prior approval pursuant to paragraph (j)(3) of this section, a covered savings and loan holding company may not make a capital distribution (excluding any capital distribution arising from the issuance of a capital instrument eligible for inclusion in the numerator of a regulatory capital ratio) if the capital distribution would occur after the occurrence of an event requiring resubmission under paragraph (e)(4)(i)(A) or (B) of this section.

(2) *Contents of request.* A request for a capital distribution under this section must contain the following information:

(i) The covered savings and loan holding company's capital plan or a discussion of changes to the covered savings and loan holding company's capital plan since it was last submitted to the Federal Reserve;

(ii) The purpose of the transaction;

(iii) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(iv) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the covered savings and loan holding company's capital adequacy under a severely adverse scenario, a revised capital plan, and supporting data).

(3) *Approval of certain capital distributions.* (i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will act on a request for prior approval of a capital distribution within 30 calendar days after the receipt of all the information required under paragraph (j)(2) of this section.

(ii) In acting on a request for prior approval of a capital distribution, the Board, or appropriate Reserve Bank with concurrence of the Board, will apply the considerations and principles in paragraph (g) of this section, as appropriate. In addition, the Board, or the appropriate Reserve Bank with concurrence of the Board, may disapprove the transaction if the covered savings and loan holding company does not provide all of the information required to be submitted under paragraph (j)(2) of this section.

(4) *Disapproval and hearing.* (i) The Board, or the appropriate Reserve Bank with concurrence of the Board, will notify the covered savings and loan holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by the Board, the covered savings and loan holding company may submit a written request for a hearing.

(ii) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact. An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(iii) Written notice of the final decision of the Board shall be given to the covered savings and loan holding company within 60 calendar days of the conclusion of any informal hearing ordered by the Board, provided that the Board may extend this period upon notice to the requesting party.

(iv) While the Board's decision is pending and until such time as the Board, or the appropriate Reserve Bank with concurrence of the Board, approves the capital distribution at issue, the covered savings and loan holding company may not make such capital distribution.

(k) *Post notice requirement.* A covered savings and loan holding company must notify the Board and the appropriate Reserve Bank within 15 days of making a capital distribution if:

(1) The capital distribution was approved pursuant to paragraph (j)(3) of this section; or

(2) The dollar amount of the capital distribution will exceed the dollar amount of the covered savings and loan holding company's final planned capital distributions, as measured on an aggregate basis beginning in the fourth quarter of the planning horizon through the quarter at issue.

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 9. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.*, 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart E—Supervisory Stress Test Requirements for Certain U.S. Banking Organizations With $100 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

■ 10. Amend § 252.44 by revising paragraphs (a)(3) and (d) to read as follows:

§ 252.44 Analysis conducted by the Board.

(a) * * *

(3) In conducting the analysis, the Board will not incorporate changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile in its projections of losses, net income, pro forma capital levels, and capital ratios.

* * * * *

(d) *Frequency of analysis conducted by the Board*—(1) *General.* Except as provided in paragraph (d)(2) of this section, the Board will conduct its analysis of a covered company according to the frequency in Table 1 to § 252.44(d)(1).

TABLE 1 TO § 252.44(D)(1)

If the covered company is a:	Then the Board will conduct its analysis:
Global systemically important BHC	Annually.
Category II bank holding company	Annually.
Category II U.S. intermediate holding company	Annually.
Category III bank holding company	Annually.
Category III U.S. intermediate holding company	Annually.
Category IV bank holding company	Biennially, occurring in each year ending in an even number.
Category IV U.S. intermediate holding company	Biennially, occurring in each year ending in an even number.
Nonbank financial company supervised by the Board	Annually.

(2) *Change in frequency.* (i) The Board may conduct a stress test of a covered company on a more or less frequent basis than would be required under paragraph (d)(1) of this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

(ii) A Category IV bank holding company or Category IV U.S. intermediate holding company may elect to have the Board conduct a stress test with respect to the company in a year ending in an odd number by providing notice to the Board and the appropriate Federal Reserve Bank by January 15 of that year. Notwithstanding the previous sentence, such a company may elect to have the Board conduct a stress test with respect to the company in the year 2021 by providing notice to the Board and the appropriate Federal Reserve Bank by April 5, 2021.

(3) *Notice and response*—(i) *Notification of change in frequency.* If the Board determines to change the frequency of the stress test under paragraph (d)(2)(i) of this section, the Board will notify the company in writing and provide a discussion of the basis for its determination.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under paragraph (d)(3)(i) of this section, a covered company may request in writing that the Board reconsider the requirement to conduct a stress test on a more or less frequent basis than would be required under paragraph (d)(1) of this section. A covered company's request for reconsideration must include an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

Subpart F—Company-Run Stress Test Requirements for Certain U.S. Bank Holding Companies and Nonbank Financial Companies Supervised by the Board

■ 11. Amend § 252.54 revising paragraph (b)(2)(i)(B) to read as follows:

§ 252.54 Stress test.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) Is not a Category IV bank holding company.

* * * * *

■ 12. Amend § 252.56 by revising paragraph (a)(2) to read as follows:

§ 252.56 Methodologies and practices.

(a) * * *

(2) The potential impact on the regulatory capital levels and ratios applicable to the covered bank, and any other capital ratios specified by the Board, and in doing so must:

(i) Incorporate the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses or adjusted allowance for credit losses, as appropriate, for credit exposures throughout the planning horizon; and

(ii) Exclude the impacts of changes to a firm's business plan that are likely to have a material impact on the covered company's capital adequacy and funding profile.

* * * * *

■ 13. Amend § 252.58 by revising paragraph (a)(1) to read as follows:

§ 252.58 Disclosure of stress test results.

(a) * * *

(1) *In general.* A covered company must publicly disclose a summary of the results of the stress test required under § 252.54 within the period that is 15 calendar days after the Board publicly discloses the results of its supervisory stress test of the covered company pursuant to § 252.46(b), unless that time is extended by the Board in writing.

* * * * *

Appendix B to Part 252—[Amended]

■ 14. Amend appendix B to part 252 by removing and reserving section 2.6.

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

Ann Misback,

Secretary of the Board.

[FR Doc. 2021–02182 Filed 2–2–21; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

[Docket No. NCUA–2020–0098]

RIN 3133–AF28

Role of Supervisory Guidance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is adopting a final rule that codifies the Interagency Statement Clarifying the Role of

Supervisory Guidance, issued by the NCUA, Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve (the Board), the Office of Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (Bureau) (collectively, the agencies) on September 11, 2018 (2018 Statement). By codifying the 2018 Statement, with amendments, the final rule confirms that the NCUA will continue to follow and respect the limits of administrative law in carrying out their supervisory responsibilities. The 2018 Statement reiterated well-established law by stating that, unlike a law or regulation, supervisory guidance does not have the force and effect of law. As such, supervisory guidance does not create binding legal obligations for the public. Because it is incorporated into the final rule, the 2018 Statement, as amended, is binding on the NCUA. The final rule adopts the rule as proposed without change.

DATES: The provisions of this final rule are effective on March 5, 2021.

FOR FURTHER INFORMATION CONTACT:

Naghi Khaled, Policy Officer (703) 664–3883 or Scott Neat, Associate Director, Office of Examinations and Insurance at (703) 518–6363; Ian Marenna, Associate General Counsel, or Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540. National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Background

The NCUA recognizes the important distinction between issuances that serve to implement acts of Congress (known as ''regulations'' or ''legislative rules'') and non-binding supervisory guidance documents.[1] Regulations create binding legal obligations. Supervisory guidance is issued by an agency to ''advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power'' and does not create binding legal obligations.[2]

In recognition of the important distinction between rules and guidance, on September 11, 2018, the NCUA along with the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve (the Board), the Office of Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (Bureau) (collectively, the agencies) issued the Interagency Statement Clarifying the Role of Supervisory Guidance (2018 Statement) to explain the role of supervisory guidance and describe the agencies' approach to supervisory guidance.[3] As noted in the 2018 Statement, the agencies issue various types of supervisory guidance to their respective supervised institutions, including, but not limited to, interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions. Supervisory guidance outlines the agencies' supervisory expectations or priorities and articulates the agencies' general views regarding practices for a given subject area. Supervisory guidance often provides examples of practices that mitigate risks, or that the agencies generally consider to be consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers.[4] The agencies noted in the 2018 Statement that supervised institutions at times request supervisory guidance and that guidance is important to provide clarity to these institutions, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.[5]

The 2018 Statement restated existing law and reaffirmed the agencies' understanding that supervisory guidance does not create binding, enforceable legal obligations. The 2018 Statement reaffirmed that the agencies do not issue supervisory criticisms for ''violations'' of supervisory guidance and described the appropriate use of supervisory guidance by the agencies. In the 2018 Statement, the agencies also expressed their intention to (1) limit the use of numerical thresholds in guidance; (2) reduce the issuance of multiple supervisory guidance documents on the same topic; (3) continue efforts to make the role of supervisory guidance clear in communications to examiners and supervised institutions; and (4) encourage supervised institutions to discuss their concerns about supervisory guidance with their agency contact.

On November 5, 2018, the OCC, Board, FDIC, and Bureau each received a petition for a rulemaking (Petition), as permitted under the Administrative Procedure Act (APA),[6] requesting that the agencies codify the 2018 Statement.[7] The Petitioners did not submit a petition to the NCUA, which has no supervisory authority over the financial institutions that are represented by Petitioners. The NCUA determined that it was appropriate to join this rulemaking on its own initiative. References in the preamble to ''agencies'' therefore include the NCUA.

The Petition argued that a rule on guidance is necessary to bind future agency leadership and staff to the 2018 Statement's terms. The Petition also suggested there are ambiguities in the 2018 Statement concerning how supervisory guidance is used in connection with matters requiring attention, matters requiring immediate attention (collectively, MRAs for banks), as well as in connection with other supervisory actions that should be clarified through a rulemaking. As explained in the next section, the NCUA examiners use a notification similar to an MRA called a Document of Resolution (DOR). Finally, the Petition called for the rulemaking to implement changes in the agencies' standards for issuing MRAs. Specifically, the Petition requested that the agencies limit the role of MRAs to addressing circumstances in which there is a violation of a statute,

[1] Regulations are commonly referred to as legislative rules because regulations have the ''force and effect of law.'' *Perez* v. *Mortgage Bankers Association,* 575 U.S. 92, 96 (2015) (citations omitted).

[2] *See Chrysler* v. *Brown,* 441 U.S. 281, 302 (1979) (quoting the Attorney General's Manual on the Administrative Procedure Act at 30 n.3 (1947) (Attorney General's Manual) and discussing the distinctions between regulations and general statements of policy, of which supervisory guidance is one form).

[3] *See https://www.occ.gov/news-issuances/news-releases/2018/nr-ia-2018-97a.pdf.*

[4] While supervisory guidance offers guidance to the public on the agencies' approach to supervision under statutes and regulations and safe and sound practices, the issuance of guidance is discretionary and is not a prerequisite to an agency's exercise of its statutory and regulatory authorities. This point reflects the fact that statutes and legislative rules, not statements of policy, set legal requirements.

[5] The Administrative Conference of the United States (ACUS) has recognized the important role of guidance documents and has stated that guidance can ''make agency decision-making more predictable and uniform and shield regulated parties from unequal treatment, unnecessary costs, and unnecessary risk, while promoting compliance with the law.'' ACUS, Recommendation 2017–5, *Agency Guidance Through Policy Statements* at 2 (adopted December 14, 2017), *available at https://www.acus.gov/recommendation/agency-guidance-through-policy-statements.* ACUS also suggests that ''policy statements are generally better [than legislative rules] for dealing with conditions of uncertainty and often for making agency policy accessible.'' *Id.* ACUS's reference to ''policy statements'' refers to the statutory text of the APA, which provides that notice and comment is not required for ''general statements of policy.'' The phrase ''general statements of policy'' has commonly been viewed by courts, agencies, and administrative law commentators as including a wide range of agency issuances, including guidance.

[6] 5 U.S.C. 553(e).

[7] *See* Petition for Rulemaking on the Role of Supervisory Guidance, *available at https://bpi.com/wp-content/uploads/2018/11/BPI_PFR_on_Role_of_Supervisory_Guidance_Federal_Reserve.pdf.*

regulation, or order, or demonstrably unsafe or unsound practices.

B. NCUA's Examination and Supervisory Oversight

As a member of the Federal Financial Institution Examination Council (FFIEC),[8] the NCUA participates with and generally has regulations and guidance consistent with the other financial regulators. Nevertheless, given its different statutory framework, the NCUA's supervision of Federal credit unions and federally insured, state-chartered credit unions is different than the other agencies. With respect to safety and soundness, the Federal Credit Union Act requires the NCUA to ensure all federally insured credit unions operate safely and soundly.[9] In particular, 12 U.S.C. 1786(b) compels the agency to act to correct unsafe or unsound conditions or practices in insured credit unions.[10]

Often, and necessarily, regulatory requirements are not simple prescriptions that lend themselves to right-or-wrong determinations. Codifying in regulation all unsafe and unsound conditions and practices in explicit detail would be unfeasible, especially in light of the ever-evolving nature of financial services. Highly detailed or prescriptive regulations would also lead to unintended consequences. Regulated entities would face additional burden, less flexibility, and innovation would be stifled.

Notwithstanding these limitations, the NCUA has issued a regulation that implements the Federal Credit Union Act's requirement that federally insured credit unions operate safely and soundly. Section 741.3(b) of the NCUA's Rules and Regulation lists various factors the agency considers ''in determining whether the credit union's financial condition and policies are both safe and sound.'' Regarding the continuing insurability of a credit union, Section 741.3(d) of the NCUA's Rules and Regulation goes on to specify that ''[i]nsurance of member accounts would not otherwise involve undue risk to the National Credit Union Share Insurance Fund (NCUSIF).'' [11]

The NCUA needs to be able to address safety and soundness issues through supervisory determinations that properly evaluate and weigh the relevant facts and considerations in their totality. For example, a federally insured credit union may be engaged in an inherently high-risk activity, but the credit union may mitigate the risk by holding extra capital and liquidity and adopting leading practices in managing the underlying risk. Conversely, another institution may have not adopted sufficient mitigations to offset the risk, leading to undue risk to the National Credit Union Share Insurance Fund and taxpayers.

Like the other agencies, the NCUA has instructions that set requirements for how examiners supervise institutions.[12] For example, when addressing a concern in a report of examination, examiners are required to cite the highest authority related to the subject matter, and describe the root problem including the corresponding details and facts that support the examiner's conclusion. Examiners can cite agency guidance when addressing some violations or unsafe or unsound conditions or practices when they involve a significant degree of judgment or interpretation in their application. This is necessary and helpful for both regulated institutions and examiners by standardizing application of regulatory requirements that require judgment or interpretation in their application, instead of relying on the individual views of each examiner. The examiner guidance explains how the subject relates to a regulatory or statutory requirement and provides the institution with additional information on the topic.

Pursuant to agency policy, examiners may only include in the Document of Resolution (DOR) [13] issues that are significant enough that they would be escalated to the next level of enforcement for failure to correct the problem. These types of problems are defined as:

- Unsafe or unsound practices that reasonably threaten the stability of the credit union—that is, any action or lack of action that, if left uncorrected, may result in substantial loss or damage to the credit union or its members.
- Violations of law or regulation that are systemic, recurring, or that result from willful neglect.

With that statutory and regulatory background in mind, the NCUA uses DORs to address practices that result in substantive noncompliance with laws or rules, enforcement actions, or conditions imposed in writing. The NCUA's policy is to identify deficient practices and violations in a timely manner and encourage corrective action well before deficiencies affect a credit union's financial condition or viability.

II. The Proposed Rule and Comments Received

On November 5, 2020, the agencies issued a proposed rule (Proposed Rule) that would codify the 2018 Statement, with clarifying changes, as an appendix to proposed rule text.[14] The Proposed Rule would supersede the 2018 Statement. The rule text would also provide that the amended version of the 2018 Statement is binding on each respective agency.

Clarification of the 2018 Statement

The Petition expressed support for the 2018 Statement and acknowledged that it addresses many issues of concern for the Petitioners relating to the use of supervisory guidance. The Petition expressed concern, however, that the 2018 Statement's reference to not basing ''criticisms'' on violations of supervisory guidance has led to confusion about whether MRAs are covered by the 2018 Statement. Accordingly, the agencies proposed to clarify in the Proposed Rule that the term ''criticize'' includes the issuance of MRAs and other supervisory criticisms such as DORs, including those communicated through matters requiring board attention, documents of resolution, and supervisory recommendations (collectively,

[8] *https://www.ffiec.gov/.*

[9] There are 21 references to ''safety and soundness'' in the Federal Credit Union Act. *See* 12 U.S.C. 1757(5)(A)(vi)(I), 1759(d & f), 1781(c)(2), 1782(a)(6)(B), 1786(b), 1786(e), 1786(f), 1786(g), 1786(k)(2), 1786(r), 1786(s), and 1790d(h). Similarly, the NCUA requires federally insured credit unions to comply with relevant consumer protection statutes and regulations.

[10] ''Whenever, in the opinion of the Board, any insured credit union is engaging or has engaged in unsafe or unsound practices in conducting the business of such credit union, or is in an unsafe or unsound condition to continue operations as an insured credit union, or is violating or has violated an applicable law, rule, regulation, order, or any condition imposed in writing by the Board in connection with any action on any application, notice, or other request by the credit union or institution-affiliated party, or is violating or has violated any written agreement entered into with the Board, the Board shall serve upon the credit union a statement with respect to such practices or conditions or violations for the purpose of securing the correction thereof.''

[11] This provision states: ''Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the NCUSIF is or may be present. For purposes of this section, the term 'undue risk to the NCUSIF' is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and which indicates a reasonably foreseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the NCUSIF.''

[12] *https://www.ncua.gov/regulation-supervision/manuals-guides/examiners-guide.*

[13] The *Document of Resolution* section of the NCUA's report of examination is the equivalent of *Matters Requiring Immediate Attention* used by the other banking agencies.

[14] 85 FR 70512 (November 5, 2020).

supervisory criticisms).[15] As such, the agencies reiterated that examiners will not base supervisory criticisms on a ''violation'' of or ''non-compliance with'' supervisory guidance. The agencies noted that, in some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations. The agencies also reiterated that they will not issue an enforcement action on the basis of a ''violation'' of or ''non-compliance'' with supervisory guidance. The Proposed Rule reflected these clarifications.[16]

The Petition requested further that these supervisory criticisms should not include ''generic'' or ''conclusory'' references to safety and soundness. The agencies agreed that supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions. Accordingly, the agencies included language reflecting this practice in the Proposed Rule.

The Petition also suggested that MRAs, as well as memoranda of understanding (MOUs), examination downgrades, and any other formal examination mandate or sanction, should be based only on a violation of a statute, regulation, or order, including a ''demonstrably unsafe or unsound practice.''[17] As noted in the Proposed Rule, examiners all take steps to identify deficient practices before they rise to violations of law or regulation or before they constitute unsafe or unsound banking practices. The agencies stated that they continue to believe that early identification of deficient practices serves the interest of the public and of supervised institutions. Early identification protects the safety and soundness of banks and credit unions promotes consumer protection and reduces the costs and risk of deterioration of financial condition from deficient practices resulting in violations of laws or regulations, unsafe or unsound conditions, or unsafe or unsound practices. The Proposed Rule also noted that the agencies have different supervisory processes, including for issuing supervisory criticisms. For these reasons, the agencies did not propose revisions to their respective supervisory practices relating to supervisory criticisms.

The agencies also noted that the 2018 Statement was intended to focus on the appropriate use of supervisory guidance in the supervisory process, rather than the standards for supervisory criticisms. To address any confusion concerning the scope of the 2018 Statement, the Proposed Rule removed two sentences from the 2018 Statement concerning grounds for ''citations'' and the handling of deficiencies that do not constitute violations of law.[18]

Comments on the Proposed Rule

A. NCUA Specific Comments

The NCUA received 13 comments specifically focusing on credit union concerns about the Proposed Rule. These commenters, which included national trade associations, state credit union leagues, and credit unions, generally supported he proposed rule. Six comments were sent jointly to each regulator, two were from associations that provided similar comments to the CFPB, and five were comments provided solely to the NCUA. Topics discussed within the scope of the proposal are issues addressing the effect and applicability of the guidance. Issues beyond the scope of the rule addressed coordination with other Federal and State regulatory authorities, consistency in applying guidance, the examination cycle, the need for an appeals process, and the need for the Board to issue more guidance on various topics.

One commenter stated that each guidance statement from the NCUA should include a notice that it is nonbinding. In addition, the commenter believed that the NCUA should add a notice to each guidance statement to support that credit unions are fully permitted to develop their own approaches to compliance issues, and that the examiner's recommendations or suggestions do not eliminate the ability of the credit union to implement its specific solutions.

Aside from expressing general support for the rule, most credit union specific comments were beyond the scope of the rulemaking. Three commenters requested that the NCUA improve coordination with respect to other Federal regulators, especially CFPB and FINCEN. Two commenters also requested that NCUA improve coordination with state supervisory authorities. The commenters stated that such enhanced coordination would help avoid overlapping or consecutive examinations, which they stated imposes operational burdens and utilizes critical staff member time. With respect to state guidance, two commenters stated that the NCUA must ensure state regulators understand how the NCUA will incorporate state reliance on state guidance into joint examinations or in alternating examinations where the NCUA may be the lead agency.

Two commenters stated that there should be more consistent application of the rules and guidance across regions, with examples provided about BSA/AML and audit reports. One commenter recommended that the NCUA should create a task force to evaluate

[15] The agencies use different terms to refer to supervisory actions that are similar to MRAs and Matters Requiring Immediate Attention (MRIAs), including matters requiring board attention, documents of resolution, and supervisory recommendations.

[16] The 2018 Statement contains the following sentence:

Examiners will not criticize a supervised financial institution for a ''violation'' of supervisory guidance.

2018 Statement at 2. As revised in the Proposed Rule, this sentence read as follows:

Examiners will not criticize *(including through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations)* a supervised financial institution for, and agencies will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with supervisory guidance.

Proposed Rule (emphasis added). As discussed *infra* in footnote 12, the Proposed Rule also removed the sentences in the 2018 Statement that referred to ''citation,'' which the Petition suggested had been confusing. These sentences were also removed to clarify that the focus of the Proposed Rule related to the use of guidance, not the standards for MRAs.

[17] The Petition asserted that the federal banking agencies rely on 12 U.S.C. 1818(b)(1) when issuing MRAs based on safety-and-soundness matters. Through statutory examination and reporting authorities, Congress has conferred upon the agencies the authority to exercise visitorial powers with respect to supervised institutions. The Supreme Court has indicated support for a broad reading of the agencies' visitorial powers. *See, e.g., Cuomo* v. *Clearing House Assn L.L.C.,* 557 U.S. 519 (2009); *United States* v. *Gaubert,* 499 U.S. 315 (1991); and *United States* v. *Philadelphia Nat. Bank,* 374 U.S. 321 (1963). The visitorial powers facilitate early identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound banking practice, or breach of fiduciary duty under 12 U.S.C. 1818. For credit unions, the corresponding provision is 12 U.S.C. 1786.

[18] The following sentences from the 2018 Statement were not present in the Proposed Rule:

Rather, any citations will be for violations of law, regulation, or non-compliance with enforcement orders or other enforceable conditions. During examinations and other supervisory activities, examiners may identify unsafe or unsound practices or other deficiencies in risk management, including compliance risk management, or other areas that do not constitute violations of law or regulation.

2018 Statement at 2. The agencies did not intend these deletions to indicate a change in supervisory policy.

inconsistent application of guidance comprised of credit union officials and staff.

One commenter stated that the NCUA Interpretive Rules and Policy Statements (IRPS) are part exempted interpretive rules and covered policy statements. NCUA might consider explicitly identifying existing and future issuances as either covered supervisory guidance or exempt interpretive rule to provide clarity for stakeholders.

B. Comments to All the Agencies Including the NCUA

In addition, the agencies received 30 comments concerning the Proposed Rule.[19] Commenters representing trade associations for banking institutions and other businesses, state bankers' associations, individual financial institutions, and one member of Congress expressed support for the proposed rule. These commenters supported codification of the 2018 Interagency Statement and the reiteration by the agencies that guidance does not have the force of law and cannot give rise to binding, enforceable legal obligations. One of these commenters stated that the proposal would serve the interests of consumers and competition by allowing institutions to know what the law is and to develop innovative products that serve consumers and business clients, without uncertainty regarding potential regulatory consequences. These commenters expressed strong support as well for the clarification in the Proposed Rule that the Agencies will not criticize, including through the issuance of ''matters requiring attention,'' a supervised financial institution for a ''violation'' of, or ''non-compliance'' with, supervisory guidance.

One commenter agreed with the agencies that supervisory criticisms should not be limited to violation of statutes, regulations, or order, including a ''demonstrable unsafe or unsound practice'' and that supervisory guidance remains a beneficial tool to communicate supervisory expectations to the industry. The commenter stated that the proactive identification of supervisory criticism or deficiencies that do not constitute violations of law facilitates forward-looking supervision, which helps address problems before they warrant a formal enforcement action. The commenter noted as well that supervisory guidance provides important insight to industry and ensures consistency in the supervisory approach and that supervised institutions frequently request supervisory guidance. The commenter observed that the pandemic has amplified the requests for supervisory guidance and interpretation, and that it is apparent institutions want clarity and guidance from regulators.

Two commenters, both advocacy groups, opposed the proposed rule, suggesting that codifying the 2018 Statement may undermine the important role that supervisory guidance can play by informing supervisory criticism, rather than merely clarifying that it will not serve as the basis for enforcement actions. One commenter stated that it is essential for agencies to have the prophylactic authority to base criticisms on improper practices by financial institutions that may not yet have ripened into violations of law or significant safety and soundness concerns. The commenter stated that this is particularly important with respect to large banks, where delay in addressing concerns could lead to a broader crisis. One commenter stated that the agencies have not explained the benefits that would result from the rule or demonstrated how the rule will promote safety and soundness or consumer protection. The commenter argued that supervision is different from other forms of regulation and requires supervisory discretion, which could be constrained by the rule. One of these commenters argued that the proposal would send a signal that financial institutions have wider discretion to ignore supervisory guidance.

B. Scope of Rule

Several commenters requested that the Proposed Rule cover interpretive rules and clarify that interpretive rules do not have the force and effect of law. One commenter stated that the agencies should clarify whether they believe that interpretive rules can be binding. The commenter argued that, under established legal principles, interpretive rules can be binding on the issuing agency but not on the public. Some commenters suggested that the agencies follow ACUS recommendations for issuing interpretive rules and that the agencies should clarify when particular guidance documents are or are not interpretive rules and allow the public to petition and change an interpretation. A number of commenters requested that the agencies expand the statement to address the standards that apply to MRAs and other supervisory criticisms such as DORs, a suggestion made in the Petition.

C. Role of Guidance Documents

Several commenters recommended that the agencies clarify that the practices described in supervisory guidance are merely examples of compliant conduct, not expectations that may form the basis for supervisory criticism. One commenter suggested that the agencies state that when agencies offer examples of safe and sound conduct, compliance with consumer protection standards, appropriate risk management practices, or acceptable practices through supervisory guidance or interpretive rules, the Agencies will treat adherence to that supervisory guidance or interpretive rule as deemed compliance. One commenter also requested that the agencies make clear that guidance that goes through public comment, as well as any examples used in guidance, are not binding. The commenter also requested that the agencies affirm that they will apply statutory factors while processing applications.

One commenter argued that guidance provides valuable information to supervisors about how their discretion should be exercised and therefore plays an important role in supervision. According to this commenter, 12 U.S.C. 1831p–1 and 12 U.S.C. 1818 recognize the discretionary power conferred on banking agencies separate from the power to issue regulations. The commenter noted that, pursuant to these statutes, regulators may issue cease and desist orders based on a reasonable cause to believe that an institution has engaged, is engaging or is about to engage in an unsafe and unsound practice, separately and apart from whether the institution has technically violated a law or regulation. The commenter added that Congress entrusted the agencies with the power to determine whether practices are unsafe and unsound and attempt to halt such practices through supervision, even if a specific case may not constitute a violation of a written law or regulation.

D. Supervisory Criticisms

Several commenters addressed supervisory criticisms and how they relate to guidance. Commenters suggested that supervisory criticisms should be specific as to practices, operations, financial conditions, or other matters that could have a negative effect. Commenters suggested that MRAs, memoranda of understanding and any other formal written mandates or sanctions should be based only on a violation of a statute or regulation. Similarly, commenters argued that there should be no references to guidance in

[19] Of the comments received, some comments were not submitted to all agencies, some comments were identical, and many comments were directed at an unrelated rulemaking by the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN).

written formal actions and that banking institutions should be reassured that they will not be criticized or cited for a violation of guidance when no law or regulation is cited. One commenter suggested that it would instead be appropriate to discuss supervisory guidance privately, rather than publicly, potentially during the pre-exam meetings or during examination exit meetings. Another commenter suggested that, while referencing guidance in supervisory criticism may be useful at times, agencies should provide safeguards to prevent such references from becoming the de facto basis for supervisory criticisms. One commenter suggested that examiners also should not criticize community banks in their final written examination reports for not complying with ''best practices'' unless the criticism involves a violation of bank policy or regulation. The commenter added that industry best practices should be transparent enough and sufficiently known throughout the industry before they are cited in an examination report. One commenter requested that examiners should not apply large bank practices to community banks that have a different, less complex and more conservative business model. One commenter asserted that MRAs should not be based on ''reputational risk,'' but rather the underlying conduct giving rise to concerns should be the basis for an MRA and asked the agencies to address this in the final rule.

Commenters that opposed the proposal did not support restricting supervisory criticism or sanctions to explicit violations of law or regulation. One commenter expressed concern that requiring supervisors to wait for an explicit violation of law before issuing criticism would effectively erase the line between supervision and enforcement. One commenter emphasized the importance of bank supervisors basing their criticisms on imprudent bank practices that may not yet have ripened into violations of laws or rules but which if left unaddressed could undermine safety and soundness or pose harm to consumers.

One commenter argued that the agencies should state clearly that guidance can and will be used by supervisors to inform their assessments of banks' practices; that it may be cited as, and serve as the basis for, criticisms. According to the commenter, even under the ''well-established law'' described in the proposal, it is quite permissible for guidance to be used as a set of standards that may indeed inform a criticism, provided that application of the guidance is used for corrective purposes, if not to support an enforcement action.

According to one commenter, the proposal makes fine conceptual distinctions between, for example, issuing supervisory criticisms ''on the basis of'' guidance (which is apparently forbidden) and issuing supervisory criticisms that make ''reference'' to supervisory guidance (which continues to be permitted). The commenter suggested that is a distinction that it may be difficult for people to parse in practice. According to the commenter, a rule that makes such a distinction is likely to have a chilling effect on supervisors attempting to implement policy in the field. According to another commenter, the language allowing examiners to reference supervisory guidance to provide examples is too vague and threatens to marginalize the role of guidance to the point that it becomes almost useless in the process of issuing criticisms designed to correct deficient bank practices.

E. Legal Authority and Visitorial Powers

One commenter questioned the agencies' reference in the proposal to visitorial powers as an additional authority for early identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound banking practice, or breach of fiduciary.

F. Issuance and Management of Supervisory Guidance

Several commenters made suggestions about how the agencies should issue and manage supervisory guidance. Some comments suggested that the agencies should clearly delineate between regulations and supervisory guidance. Commenters encouraged the agencies to regularly review, update, and potentially rescind outstanding guidance. One commenter suggested that the agencies rescind outstanding guidance that functions as a rule but has not gone through notice and comment. One commenter suggested that the agencies memorialize their intent to revisit and potentially rescind existing guidance, as well as limit multiple guidance documents on the same topic. Commenters suggested that supervisory guidance should be easy to find, readily available, online, and in a format that is user-friendly and searchable.

One commenter encouraged the agencies to issue principles-based guidance that does not contain the kind of granularity that could be misconstrued as binding expectations. According to this commenter, the agencies can issue separate FAQs with more detailed information but should clearly identify these as non-binding illustrations. This commenter also encouraged the agencies to publish proposed guidance for comment when circumstances allow. One commenter expressed concern that the agencies will aim to reduce the issuances of multiple supervisory guidance documents and will thereby reduce the availability of guidance in circumstances where guidance would be valuable.

Responses to Comments

As stated in the Proposed Rule, the 2018 Statement was intended to focus on the appropriate use of supervisory guidance in the supervisory process, rather than the standards for supervisory criticisms. The standards for issuing MRAs and other supervisory actions such as DORs were, therefore, outside the scope of this rulemaking. For this reason, and for reasons discussed earlier, the final rule does not address the standards for MRAs and other supervisory actions such as DORs. Similarly, because the NCUA is not addressing approaches to supervisory criticism in the final rule, including any criticism related to reputation risk, the final rule does not include standards for supervisory criticisms relating to ''reputation risk.''

With respect to the comments on coverage of interpretive rules, the NCUA agrees with the commenter that interpretive rules do not, alone, ''have the force and effect of law'' and must be rooted in, and derived from, a statute or regulation.[20] While interpretive rules and supervisory guidance are similar in lacking the force and effect of law, interpretive rules and supervisory guidance are distinct under the APA and its jurisprudence and are generally issued for different purposes.[21] Interpretive rules are typically issued by

[20] *See Mortgage Bankers Association,* 575 U.S. at 96.

[21] Questions concerning the legal and supervisory nature of interpretive rules are case-specific and have engendered debate among courts and administrative law commentators. The NCUA takes no position in this rulemaking on those specific debates. *See, e.g.,* R. Levin, *Rulemaking and the Guidance Exemption,* 70 Admin. L. Rev. 263 (2018) (discussing the doctrinal differences concerning the status of interpretive rules under the APA); *see also* Nicholas R. Parillo, *Federal Agency Guidance and the Powder to Bind: An Empirical Study of Agencies and Industries,* 36 Yale J. Reg 165, 168 n.6 (2019) (''Whether interpretive rules are supposed to be nonbinding is a question subject to much confusion that is not fully settled''); *see also* ACUS, Recommendation 2019–1, *Agency Guidance Through Interpretive Rules* (Adopted June 13, 2019), *available at https://www.acus.gov/recommendation/agency-guidance-through-interpretive-rules* (noting that courts and commentators have different views on whether interpretive rules bind an agency and effectively bind the public through the deference given to agencies' interpretations of their own rules under *Auer* v. *Robbins,* 519 U.S. 452 (1997)).

an agency to advise the public of the agency's construction of the statutes and rules that it administers,[22] whereas general statements of policy, such as supervisory guidance, advise the public of how an agency intends to exercise its discretionary powers.[23] To this end, guidance generally reflects an agency's policy views, for example, on practices on safe and sound risk management. On the other hand, interpretive rules generally resolve ambiguities regarding what statutes and regulations require. Because supervisory guidance and interpretive rules have different characteristics and serve different purposes, the NCUA is adopting the proposed rule's coverage of supervisory guidance only.

With respect to the question of whether to adopt ACUS's procedures for allowing the public to request reconsideration or revision of an interpretive rule, this rulemaking, again, does not address interpretive rules. As such, the NCUA is not adding procedures for challenges to interpretive rules through this rulemaking.

In response to the comment that the agencies treat examples in guidance as ''safe harbors,'' the NCUA agrees that examples offered in guidance may provide reassurance about practices that, in general, may lead to safe and sound operation and compliance with regulations and statutes. The examples in guidance, however, are typically generalized. The question of whether the employment of the examples meets supervisory goals requires consideration of how an institution applies those examples under the facts and circumstances. In addition, the underlying legal principle of guidance is that it does not created binding legal obligation for either the public or an agency. As such, the NCUA does not intend to deem examples in guidance as categorically setting safe harbors.[24]

In response to the comment that the proposal may undermine the important role that supervisory guidance can play by informing supervisory criticism and by serving to address conditions before those conditions lead to enforcement actions, the NCUA agrees that the appropriate use of guidance supports a more collaborative and constructive regulatory process that supports the safety and soundness of institutions and diminishes the need for enforcement actions. In addition, as noted by ACUS, guidance can make agency decision-making more predictable and uniform and shield regulated parties from unequal treatment, unnecessary costs, and unnecessary risk, while promoting compliance with the law. The NCUA intends, therefore, to continue using guidance to bolster the supervisory process. The NCUA does not view the final rule as weakening the role of guidance in the supervisory process. Further, the NCUA will continue to use guidance in a robust way to support the safety and soundness of credit unions. In response to the related question from these commenters, which suggested there is no basis for the rule, the NCUA notes the question of the role of guidance has been one of interest to regulated parties and other stakeholders over the past few years. The Petition is evidence of this interest. As such, the NCUA believes it will serve the public interest to reaffirm the appropriate role of supervisory guidance.

With respect to the comment that visitorial powers do not provide the authority to issue supervisory criticisms like DORs, the NCUA disagrees. The visitorial powers of financial regulators are well-established. The Supreme Court's decision in *Cuomo* v. *Clearing House Assn L.L.C.* explained that the visitation included the ''exercise of supervisory power.'' [25] The Court ruled that the ''power to enforce the law exists separate and apart from the power of visitation.'' [26] While the *Cuomo* decision involved the question of which powers may be exercised by state governments (and ruled that states could exercise law enforcement powers but could not exercise visitorial powers), the decision did not dispute that the Federal agencies possess both these powers. The Court in *Cuomo* explained that visitorial powers entailed ''oversight and supervision,'' while the Court's earlier decision in *Watters* v. *Wachovia Bank, N.A.* explained that visitorial powers entailed ''general supervision and control.'' [27] Accordingly, visitorial powers include the power to issue supervisory criticisms independent of the agencies' authority to enforce applicable laws or ensure safety and soundness. For these reasons, the NCUA reaffirms the statement in the preamble to the Proposed Rule that such visitorial powers have been conferred through statutory examination and reporting authorities, which facilitate the NCUA's identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound practice, or breach of fiduciary duty under 12 U.S.C. 1786. In the case of the federal banking agencies, such statutory examination and reporting authorities pre-existed 12 U.S.C. 1786, which neither superseded nor replaced such authorities. Each of the agencies has been vested with statutory examination and reporting authorities with respect to institutions under its supervision.[28]

In response to the commenter's request regarding guidance issued for public comment, the NCUA notes that it has made clear through the 2018 Statement and in this final rule that supervisory guidance (including guidance that goes through public comment) does not create binding, enforceable legal obligations. Rather, the NCUA issues guidance for comment in order to improve its understanding of an issue, gather information, or seek ways to achieve a supervisory objective most effectively. Similarly, examples that are included in supervisory guidance are not binding on institutions. Rather, these examples are intended to be illustrative of ways a supervised institution may implement safe and sound practices, appropriate consumer protection, prudent risk management, or other actions to comply with laws or regulations.

With respect to the commenter's request that the agencies affirm that they will apply statutory factors while processing applications, the NCUA affirms that the agency will continue to consider and apply all applicable statutory factors when processing applications.

In response to the question raised by some commenters concerning potential confusion between guidance and interpretive rules, the NCUA notes that interpretive rules are outside the scope of the rulemaking. In addition, as stated earlier, while both guidance and interpretive rules serve different purposes, both lack the force and effect of law. Interpretive rules must be rooted

[22] *Mortgage Bankers Association,* 575 U.S. at 97 (*citing Shalala* v. *Guernsey Memorial Hospital,* 514 U.S. 87, 99 (1995)); *accord* Attorney General's Manual at 30 n.3.

[23] *See Chrysler* v. *Brown,* 441 U.S. at 302 n.31 (quoting Attorney General's Manual at 30 n.3); *see also, e.g., American Mining Congress* v. *Mine Safety & Health Administration,* 995 F.2d 1106, 1112 (D.C. Cir. 1993) (outlining tests in the D.C. Circuit for assessing whether an agency issuance is an interpretive rule).

[24] The question of whether an example in guidance can provide a safe harbor would also likely not be a logical outgrowth of the proposed rule.

[25] 557 U.S. 519, 536 (2009).

[26] *Id.* at 533.

[27] 550 U.S. 1, 127 (2007).

[28] The commenter's reading of the agencies' examination and reporting authorities would assert that the agencies may examine supervised institutions and require reports, but not make findings based on such examinations and reporting, unless the finding is sufficient to warrant a formal enforcement action under the standard set out in 12 U.S.C. 1818 for banks. This reading is inconsistent with the history of federal financial supervision, including as described in the cases cited in the Proposed Rule.

in the statutes and regulations those rules interpret. As for identification of these documents, the NCUA generally does, identify guidance and interpretive rules and will continue to do so going forward.

In response to the two commenters opposing the Proposal, this final rule does not undermine any of the NCUA's safety and soundness authorities. Indeed, the final rule is designed to solidify the NCUA's ability to enforce the very matters of most importance. In addition, the NCUA notes the question of the role of guidance has been one of interest to regulated parties and other stakeholders over the past few years. The Petition is evidence of this interest. As such, the NCUA believes it will serve the public interest to reaffirm the appropriate role of supervisory guidance. Therefore, the NCUA is proceeding with the rule as proposed.

One credit union commenter stated that examiners should only use regulatory requirements as the basis to assess credit union operations, and afford credit unions the opportunity to demonstrate that their practices, which may deviate from the examples provided in supervisory guidance, nonetheless constitute safe and sound practices that meet regulatory requirements. The NCUA notes that the final rule clearly indicates that examiners will not criticize a supervised financial institution for, and the NCUA will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with supervisory guidance. Nevertheless, examiners may reference supervisory guidance to provide examples of safe and sound practices, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

Another commenter requested that all supervisory guidance be published for public comment before being issued. The commenter argued that this process would reinforce the nature of the guidance and provide credit unions a role in helping to achieve vetted guidance that is useful to their operations. The NCUA does not agree with this comment as publishing each supervisory guidance for public comment would prevent it from being issued timely to provide examples of safe and sound practices, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations where applicable. As stated in response to other comments, the NCUA's position is the underlying legal principal of guidance is that it does not create a binding legal obligation for either the public or an agency.

One comment stated that the NCUA should include a notice in each supervisory guidance indicating that it is nonbinding. The NCUA believes such a notice is not necessary, given that the final rule reflects the NCUA's position that the underlying legal principal of supervisory guidance is that it does not created binding legal obligation for either the public or an agency.

One comment recommended identifying existing and future issuances of NCUA Interpretive Rules and Policy Statements (IRPS) as either a covered supervisory guidance or an exempt interpretive rule to provide clarity for credit unions. The NCUA reiterates that interpretive rules are outside the scope of this rulemaking. However, as stated in the proposed rule, while both guidance and interpretive rules serve different purposes, both lack the force and effect of law. As for identification of NCUA IRPS issuances, the NCUA generally does identify guidance and interpretive rules and will continue to do so going forward.

Comments Beyond the Scope of the Rulemaking

Most comments by credit union affiliated commenters were beyond the scope of the rulemaking, including the need for coordination with other Federal and State regulatory authorities, consistency in applying guidance, the examination cycle, the need for an appeals process, and the need for the Board to issue more guidance on various topics. Given that these comments addressed issues not relevant to the guidance rulemaking, the NCUA has determined that it is more appropriate to assess them outside the context of this rulemaking. Nevertheless, the Board agrees with the commenters that is important to enhance coordination with other regulatory authorities and apply guidance consistently.

III. The Final Rule

For the reasons discussed above, the final rule adopts the Proposed Rule without change. However, the NCUA has decided to issue a final rule that is specifically addressed to the NCUA and NCUA-supervised institutions, rather than the joint version that the five agencies included in their joint Proposal. Although many of the comments were applicable to all of the agencies, some comments were specific to particular agencies or to groups of agencies. Having separate final rules has enabled agencies to better focus on explaining any agency-specific issues to their respective audiences of supervised institutions and agency employees.

IV. Administrative Law Matters

A. Paperwork Reduction Act Analysis

The Paperwork Reduction Act of 1995 [29] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The NCUA has reviewed this final rule and determined that it does not contain any information collection requirements subject to the PRA. Accordingly, no submissions to OMB will be made with respect to this final rule.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined by the NCUA for purposes of the RFA to include federally insured credit unions with assets less than $100 million) [30] and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. This rule will not impose any obligations on federally insured credit unions, and regulated entities will not need to take any action in response to this rule. The NCUA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The NCUA received no comments in response to its request for comments on this analysis.

C. 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 executive order. This rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the

[29] 44 U.S.C. 3501–3521.

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

distribution of power and responsibilities among the various levels of government. The NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. 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.[31]

E. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[32] 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.[33]

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

List of Subjects in 12 CFR Part 791

Administrative practice and procedure, Credit unions, Sunshine Act.

[31] Public Law 105–277, 112 Stat. 2681 (1998).

[32] 5 U.S.C. 801 *et seq.*

[33] 5 U.S.C. 801(a)(3).

[34] 5 U.S.C. 804(2).

By the National Credit Union Administration Board on January 19, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

National Credit Union Administration

12 CFR Chapter VII

Authority and Issuance

For the reasons stated in the preamble, 12 CFR part 791 is amended as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; OBSERVANCE OF NCUA BOARD MEETINGS

■ 1. The authority citation for part 791 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1786, 1787, 1789, and 5 U.S.C. 552b.

■ 2. Subpart D is added to part 791 to read as follows:

Subpart D—Use of Supervisory Guidance

Subpart D—Use of Supervisory Guidance

§ 791.19 Purpose.

The NCUA issues regulations and guidance as part of its supervisory function. This subpart reiterates the distinctions between regulations and guidance, as stated in the Interagency Statement Clarifying the Role of Supervisory Guidance (Interagency Statement) and provides that the Statement is binding on the NCUA.

§ 791.20. Implementation of the Interagency Statement.

The Statement describes the official policy of the NCUA with respect to the use of supervisory guidance in the supervisory process. The Statement is binding on the NCUA.

§ 791.21 Rule of construction.

Appendix A to this subpart does not alter the legal status of guidance that is authorized by statute, including but not limited to 12 U.S.C. 1781, 1786, and 1789, to create binding legal obligations.

Appendix A to Subpart D—Statement Clarifying the Role of Supervisory Guidance

Statement Clarifying the Role of Supervisory Guidance

The National Credit Union Administration is responsible for promoting safety and soundness and effective consumer protection at Federal credit unions. The NCUA is issuing this statement to explain the role of supervisory guidance and to describe its approach to supervisory guidance.

Difference Between Supervisory Guidance and Laws or Regulations

(1) The NCUA issue various types of supervisory guidance, including interagency statements, advisories, bulletins, policy statements, questions and answers, and frequently asked questions, to their respective supervised institutions. A law or regulation has the force and effect of law.[1] Unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the NCUA do not take enforcement actions based on supervisory guidance. Rather, supervisory guidance outlines the NCUA's supervisory expectations or priorities and articulates the agency's general views regarding appropriate practices for a given subject area. Supervisory guidance often provides examples of practices that the agency generally considers consistent with safety-and-soundness standards or other applicable laws and regulations, including those designed to protect consumers. Supervised institutions at times request supervisory guidance, and such guidance is important to provide insight to industry, as well as supervisory staff, in a transparent way that helps to ensure consistency in the supervisory approach.

Ongoing Agency Efforts To Clarify the Role of Supervisory Guidance

(2) The NCUA is clarifying the following policies and practices related to supervisory guidance:

(i) The NCUA intends to limit the use of numerical thresholds or other ''bright-lines'' in describing expectations in supervisory guidance. Where numerical thresholds are used, the NCUA intends to clarify that the thresholds are exemplary only and not suggestive of requirements. The agency will continue to use numerical thresholds to tailor, and otherwise make clear, the applicability of supervisory guidance or programs to supervised institutions, and as required by statute.

(ii) Examiners will not criticize (through the issuance of matters requiring attention, matters requiring immediate attention, matters requiring board attention, documents of resolution, and supervisory recommendations) a supervised financial institution for, and the NCUA will not issue an enforcement action on the basis of, a ''violation'' of or ''non-compliance'' with

[1] Government agencies issue regulations that generally have the force and effect of law. Such regulations generally take effect only after the agency proposes the regulation to the public and responds to comments on the proposal in a final rulemaking document.

supervisory guidance. In some situations, examiners may reference (including in writing) supervisory guidance to provide examples of safe and sound conduct, appropriate consumer protection and risk management practices, and other actions for addressing compliance with laws or regulations.

(iii) Supervisory criticisms should continue to be specific as to practices, operations, financial conditions, or other matters that could have a negative effect on the safety and soundness of the financial institution, could cause consumer harm, or could cause violations of laws, regulations, final agency orders, or other legally enforceable conditions.

(iv) The NCUA also has at times sought, and may continue to seek, public comment on supervisory guidance. Seeking public comment on supervisory guidance does not mean that the guidance is intended to be a regulation or have the force and effect of law. The comment process helps the agency to improve its understanding of an issue, to gather information on institutions' risk management practices, or to seek ways to achieve a supervisory objective most effectively and with the least burden on institutions.

(v) The NCUA will aim to reduce the issuance of multiple supervisory guidance documents on the same topic and will generally limit such multiple issuances going forward.

(3) The NCUA will continue efforts to make the role of supervisory guidance clear in their communications to examiners and to supervised financial institutions and encourage supervised institutions with questions about this statement or any applicable supervisory guidance to discuss the questions with their appropriate agency contact.

[FR Doc. 2021–01867 Filed 2–2–21; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31352; Amdt. No. 3941]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective February 3, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 2021.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

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

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on January 22, 2021.

Wade Terrell,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 25 February 2021

King Salmon, AK, PAKN, ILS Y OR LOC Y RWY 12, Amdt 19
King Salmon, AK, PAKN, LOC BC RWY 30, Amdt 6
King Salmon, AK, PAKN, RNAV (GPS) RWY 12, Amdt 2
King Salmon, AK, PAKN, RNAV (GPS) RWY 30, Amdt 2
King Salmon, AK, PAKN, VOR Y OR TACAN Y 12, Amdt 14
King Salmon, AK, PAKN, VOR Y OR TACAN Y 30, Amdt 11
St Mary's, AK, PASM, LOC RWY 17, Amdt 5E
Alabaster, AL, Shelby County, VOR–A, Amdt 7, CANCELLED
Jasper, AL, KJFX, ILS OR LOC RWY 27, Amdt 1B
Bentonville, AR, KVBT, RNAV (GPS) RWY 18, Amdt 2A
Bentonville, AR, KVBT, RNAV (GPS) RWY 36, Amdt 2B
Homerville, GA, Homerville, NDB RWY 14, Amdt 3A
Homerville, GA, Homerville, RNAV (GPS) RWY 14, Amdt 2
Homerville, GA, Homerville, RNAV (GPS) RWY 32, Amdt 2
Audubon, IA, Audubon County, Takeoff Minimums and Obstacle DP, Amdt 2
Paris, IL, KPRG, RNAV (GPS) RWY 9, Amdt 1B
Paris, IL, KPRG, RNAV (GPS) RWY 18, Orig-B
Paris, IL, KPRG, RNAV (GPS) RWY 27, Amdt 1C
Paris, IL, KPRG, RNAV (GPS) RWY 36, Orig-B
Boston, MA, KBOS, ILS OR LOC RWY 15R, Amdt 2A
Boston, MA, KBOS, VOR–A, Amdt 1C
Cloquet, MN, KCOQ, NDB RWY 18, Amdt 4B, CANCELLED
Cloquet, MN, KCOQ, NDB RWY 36, Amdt 5B, CANCELLED
Detroit Lakes, MN, KDTL, RNAV (GPS) RWY 14, Amdt 2
Detroit Lakes, MN, KDTL, RNAV (GPS) RWY 32, Amdt 2
Detroit Lakes, MN, Detroit Lakes-Wething Field, Takeoff Minimums and Obstacle DP, Amdt 1
Detroit Lakes, MN, KDTL, VOR RWY 14, Amdt 2
Detroit Lakes, MN, KDTL, VOR RWY 32, Amdt 2
Fosston, MN, KFSE, NDB RWY 34, Amdt 4B, CANCELLED
Asheville, NC, KAVL, RNAV (GPS) RWY 35, Orig-A
Raleigh/Durham, NC, Raleigh-Durham Intl, ILS OR LOC RWY 5L, Amdt 6
Raleigh/Durham, NC, Raleigh-Durham Intl, ILS OR LOC RWY 5R, ILS RWY 5R (SA CAT I), ILS RWY 5R (SA CAT II), Amdt 31
Raleigh/Durham, NC, Raleigh-Durham Intl, ILS OR LOC RWY 23L, Amdt 10
Raleigh/Durham, NC, Raleigh-Durham Intl, ILS OR LOC RWY 23R, ILS RWY 23R (CAT II), ILS RWY 23R (CAT III), Amdt 12
Raleigh/Durham, NC, Raleigh-Durham Intl, RNAV (GPS) Y RWY 23R, Amdt 2
Raleigh/Durham, NC, Raleigh-Durham Intl, RNAV (RNP) Z RWY 23R, Amdt 3
Harvard, NE, 08K, RNAV (GPS) RWY 35, Amdt 1D
Las Vegas, NV, Mc Carran Intl, ILS OR LOC RWY 1L, Amdt 3
Las Vegas, NV, KLAS, ILS OR LOC RWY 26L, Amdt 7
Las Vegas, NV, KLAS, ILS OR LOC RWY 26R, Amdt 20
Las Vegas, NV, Mc Carran Intl, RNAV (GPS) RWY 1R, Amdt 3
Las Vegas, NV, Mc Carran Intl, RNAV (GPS) Y RWY 19L, Amdt 3
Las Vegas, NV, KLAS, RNAV (GPS) Y RWY 19R, Amdt 3
Las Vegas, NV, Mc Carran Intl, RNAV (RNP) RWY 8R, Orig
Las Vegas, NV, KLAS, RNAV (RNP) RWY 26L, Orig
Las Vegas, NV, Mc Carran Intl, RNAV (RNP) RWY 26R, Orig
Las Vegas, NV, KLAS, RNAV (RNP) Z RWY 19L, Orig
Las Vegas, NV, KLAS, RNAV (RNP) Z RWY 19R, Orig
Philadelphia, PA, Philadelphia Intl, Takeoff Minimums and Obstacle DP, Amdt 11
Toughkenamon, PA, N57, RNAV (GPS) RWY 6, Orig
Toughkenamon, PA, N57, RNAV (GPS) RWY 24, Orig
Toughkenamon, PA, N57, VOR RWY 24, Amdt 7C, CANCELLED
Brookings, SD, KBKX, ILS OR LOC RWY 12, Orig-D
Brookings, SD, Brookings Rgnl, RNAV (GPS) RWY 30, Orig-A
Houston, TX, KDWH, RNAV (GPS) RWY 17R, Amdt 2
San Angelo, TX, KSJT, RNAV (GPS) RWY 36, Orig
Spencer, WV, Boggs Field, RNAV (GPS) RWY 10, Amdt 2B
Spencer, WV, Boggs Field, RNAV (GPS) RWY 28, Amdt 1C

[FR Doc. 2021–02099 Filed 2–2–21; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31353; Amdt. No. 3942]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and

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

DATES: This rule is effective February 3, 2021. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 3, 2021.

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

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA).

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

Availability

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on January 22, 2021.

Wade Terrell,

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

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
25–Feb–21	IN	Terre Haute	Terre Haute Rgnl	0/1954	11/20/20	This NOTAM, published in Docket No. 31351, Amdt No. 3940, TL 21–05 (86 FR 7496, January 29, 2021), is hereby rescinded in its entirety.
25–Feb–21	AR	Warren	Warren Muni	0/6197	11/27/20	This NOTAM, published in Docket No. 31351, Amdt No. 3940, TL 21–05 (86 FR 7496, January 29, 2021), is hereby rescinded in its entirety.
25–Feb–21	IN	Michigan City	Michigan City Muni-Phillips Field.	0/6435	1/12/21	RNAV (GPS) RWY 20, Amdt 1.
25–Feb–21	KS	Norton	Norton Muni	0/6672	1/5/21	RNAV (GPS) RWY 16, Amdt 1A.
25–Feb–21	AK	Aniak	Aniak	0/9286	1/12/21	RNAV (GPS) RWY 29, Amdt 3.
25–Feb–21	DE	Georgetown	Delaware Coastal	0/9494	1/11/21	VOR RWY 4, Orig.
25–Feb–21	AR	Clarksville	Clarksville Muni	0/9498	1/5/21	RNAV (GPS) RWY 9, Orig-B.
25–Feb–21	TX	Longview	East Texas Rgnl	1/1876	1/11/21	RNAV (GPS) RWY 13, Amdt 1A.
25–Feb–21	TX	Midland	Midland Intl Air And Space Port.	1/1993	1/12/21	RNAV (GPS) RWY 22, Amdt 1B.
25–Feb–21	AR	Warren	Warren Muni	1/3132	1/12/21	RNAV (GPS) RWY 21, Orig-B.
25–Feb–21	IN	Terre Haute	Terre Haute Rgnl	1/4356	1/15/21	VOR RWY 23, Amdt 21.

[FR Doc. 2021–02095 Filed 2–2–21; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 232

[Release Nos. 33–10901; 34–90636; 39–2535; IC–34136; File No. S7–11–20]

RIN 3235–AM77

Administration of the Electronic Data Gathering, Analysis, and Retrieval System

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting a new rule that specifies several actions that the Commission, in its administration of the Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR''), may take to promote the reliability and integrity of EDGAR submissions. The new rule establishes a process for the Commission to notify filers and other relevant persons of its actions under the rule as soon as reasonably practicable. In addition, the Commission is adopting amendments to delegate authority to the Director of the Commission's EDGAR Business Office to take actions pursuant to the new rule and two current rules relating to filing date adjustments and the continuing hardship exemption.

DATES: This rule is effective February 3, 2021.

FOR FURTHER INFORMATION CONTACT: Rosemary Filou, Chief Counsel; Monica Lilly, Senior Special Counsel; or Jane Patterson, Senior Counsel; EDGAR Business Office, at 202–551–3900, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting new rule 17 CFR 232.15 (''Rule 15'') under 17 CFR 232.10 through 232.903 (''Regulation S–T''), and new rule 17 CFR 200.30–19 (''Rule 30–19'') under 17 CFR 200.1 through 200.800, the Commission's Rules of Organization and Program Management.

I. Introduction and Background

Regulation S–T addresses, among other things, certain administrative issues related to EDGAR submissions.[1] For example, Regulation S–T allows a filer to submit an amendment to, or a notice of withdrawal of, the filer's submission to remedy a submission issue (''filer corrective disclosure'').[2] In recent years, as the volume of EDGAR submissions has grown, the Commission has increasingly confronted administrative issues that impact the Commission's ability to promote the reliability and integrity of EDGAR submissions and that are not easily addressed by existing rules or filer corrective disclosure. When these issues arise, they can create confusion for filers, investors, and other users of EDGAR.

To promote the reliability and integrity of EDGAR submissions and to provide transparency about our practices, the Commission proposed Rule 15 under Regulation S–T on August 21, 2020, to specify actions that the Commission may take to facilitate the resolution of administrative issues.[3] Proposed Rule 15 provided that, in its administration of EDGAR, the Commission may take the following actions to promote the reliability and integrity of EDGAR submissions:

- Redact, remove, or prevent dissemination of personally identifiable information that if released may result in financial or personal harm to an individual (''Sensitive PII'');
- Prevent submissions that pose a cybersecurity threat;
- Correct system or Commission staff errors;
- Remove or prevent dissemination of submissions made under an incorrect EDGAR identifier;
- Prevent the ability to make submissions when there are disputes

[1] *See* Administration of the Electronic Data Gathering, Analysis, and Retrieval System, Release No. 33–10821 (Aug. 21, 2020) [85 FR 58018 (Sep. 17, 2020)] (the ''Proposing Release''), at 58018. In 1993, the Commission adopted rules mandating that certain filings be made with the Commission electronically through the newly launched EDGAR system. *See id.*

[2] Regulation S–T anticipates that filers may address their own substantive, and in some cases, administrative, submission issues through filer corrective disclosure. *See* Proposing Release, *supra* footnote 1, at 58018.

[3] *See* Proposing Release, *supra* footnote 1.

over the authority to use EDGAR access codes;

- Prevent acceptance or dissemination of an attempted submission that it has reason to believe may be misleading or manipulative while evaluating the circumstances surrounding the submission, and allow acceptance or dissemination if its concerns are satisfactorily addressed;
- Prevent an unauthorized submission or otherwise remove a filer's access; and
- Remedy similar administrative issues relating to submissions.

Moreover, the proposed rule sets forth a process for the Commission to notify filers and other ''relevant persons'' (as defined below) of its actions under the rule as soon as reasonably practicable.

We received several comment letters in response to the proposal.[4] A few commenters were generally supportive of the proposed rule, but expressed concern that the Commission may redact information from a submission without first contacting the filer.[5] These commenters requested that filers be notified prior to any Commission action under the proposed rule, if possible. These commenters also requested that the Commission always consider an issuer's vendor or supplier to be a relevant person when the Commission provides notice of its actions to a filer and any relevant person.

Another commenter was generally supportive of the proposed Commission action when a submission contains Sensitive PII.[6] The commenter suggested that the Commission ''interpret the definition of Sensitive PII broadly.'' The commenter also suggested that the Commission provide that filers may initiate a request for redaction or removal of information from a submission containing Sensitive PII and that the Commission redact or remove such information if the filer demonstrates that the submission contains Sensitive PII.

After consideration of the comments received, we are adopting Rule 15 substantially as proposed.[7] The rule codifies and clarifies the existing approach the Commission may take to address administrative issues that arise in connection with EDGAR submissions. By adopting Rule 15, we believe there will be increased transparency for filers, investors, and other users of EDGAR about the actions the Commission may take to promote the reliability and integrity of EDGAR submissions and improved efficiency in the Commission's administration of EDGAR.

Rule 15 will not change filers' obligations under the Federal securities laws to ensure the accuracy and completeness of information in their EDGAR submissions. Moreover, in the vast majority of administrative and substantive EDGAR submission issues, filers will continue to address an error by submitting a filer corrective disclosure and nothing in Rule 15 will prevent a filer from continuing to do so.[8] We intend to continue to rely upon filer corrective disclosure to remedy most submission errors.

Additionally, the Commission is adopting new Rule 30–19 to delegate authority to the Director of the Commission's EDGAR Business Office to take actions pursuant to the following rules under Regulation S–T: Rule 15, 17 CFR 232.13(b) (''Rule 13(b)'') (relating to adjustment of filing dates), and 17 CFR 232.202 (''Rule 202'') (relating to the continuing hardship exemption).

II. Discussion of the Final Rules

A. Adoption of Rule 15

Rule 15 specifies that, in its administration of EDGAR, the Commission may take actions to promote the reliability and integrity of EDGAR submissions. Below we discuss the types of actions the Commission may take pursuant to Rule 15 to achieve those objectives.

1. Sensitive Personally Identifiable Information

We are adopting as proposed 17 CFR 232.15(a)(1) (''Rule 15(a)(1)''), which specifies that the Commission may, with regard to submissions on its public website: (i) Redact submissions containing Sensitive PII; (ii) remove submissions containing Sensitive PII; and/or (iii) prevent dissemination of submissions containing this information.[9] Pursuant to the rule, the Commission may take further steps to ensure that Sensitive PII does not reside in EDGAR and communicate as necessary with filers to facilitate submissions in which Sensitive PII is redacted.[10] Whether the Commission removes, redacts, or prevents dissemination of the Sensitive PII in the submission will be based on when the Commission first becomes aware of the Sensitive PII.

One commenter suggested that the Commission interpret the definition of Sensitive PII broadly to include additional categories of information that reflect modern expectations of privacy and physical and financial security risks.[11] The commenter discussed the personal and financial harm that would result from the disclosure of such information. The commenter also noted the regulatory trends in favor of expanding the categories of information that are considered ''sensitive'' or ''personal'' and facilitating safeguards for personally identifiable information generally.[12]

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[4] The comment letters on the Proposing Release (File No. S7–11–20) are available at *https://www.sec.gov/comments/s7-11-20/s71120.htm.*

[5] *See* Comment Letters of XBRL US (Oct. 5, 2020) (''XBRL US Comment Letter I''); JT Foxx (Oct.12, 2020) (''JT Foxx Comment Letter''); Auto Connection Manassas VA (Oct. 13, 2020) (''Auto Connection Comment Letter'').

[6] *See* Comment Letter of Ropes & Gray LLP (Oct. 19, 2020) (''Ropes & Gray Comment Letter'').

[7] As discussed in more detail in Section II.A.6, we have modified 17 CFR 232.15(a)(6) (''Rule 15(a)(6)'') as proposed to clarify that the Commission may continue to prevent acceptance or dissemination of the submission if the Commission has reason to believe that an attempted submission may be misleading or manipulative and the Commission's concerns have not been satisfactorily addressed after evaluating the circumstances surrounding the attempted submission.

[8] *See* 17 CFR 232.15(c), which is being adopted as proposed *(*''[n]othing in this rule prevents a filer from addressing an error or mistake in the filer's submission by making a filer corrective disclosure''). We received no comments on this aspect of the proposal. *See also, e.g.,* 17 CFR 232.103, 232.105, and 232.501(a)(3).

[9] Sensitive PII may comprise a single item of information (for example, a Social Security number) or a combination of two or more items (for example, a full name and financial, medical, criminal, or employment history). *See* Rule 15(a)(1).

[10] Although the Commission may take steps to ensure that Sensitive PII does not reside in EDGAR, the burden of the responsibility to redact such information from submissions continues to lie with the filer and not the Commission.

[11] *See* Ropes & Gray Comment Letter (noting that the Commission release, Amendments to Forms and Schedules to Remove Provision of Certain Personally Identifiable Information, Release No. 33–10846 (Apr. 25, 2018) [83 FR 22190 (May 14, 2018)] (''2018 PII Form Amendments Release''), contemplated the removal of Social Security numbers, foreign identity numbers, dates of birth, and places of birth from certain Commission forms and schedules, and that, in the commenter's view, the information referred to in the 2018 PII Amendments Release was the minimum of what should constitute Sensitive PII for purposes of Rule 15). *See also* Proposing Release, *supra* footnote 1, at 58019 (discussing the 2018 PII Form Amendments Release). The commenter requested that the Commission interpret Sensitive PII to include information such as bank account numbers and balance information, wire transfer instructions and related information (*e.g.,* the sender or recipient's name, phone number, address, and bank name) and credit card numbers. The commenter also requested that Sensitive PII include, among other things, email addresses and mobile phone numbers, physical addresses, login information for any bank, trading or similar account, and information associated with an individual's digital asset account.

[12] *See* Ropes & Gray Comment Letter (discussing emerging privacy regimes such as the California Consumer Privacy Act and the General Data Protection Regulation in Europe). The commenter indicated that these regimes expressly consider email addresses to be a type of personally identifiable information and are often interpreted to cover other types of information such as mobile phone numbers.

The Commission has sought to reduce the risk that Sensitive PII included in EDGAR submissions may result in financial or personal harm to individuals, and will continue to do so.[13] We believe that the description of Sensitive PII in Rule 15(a)(1) as proposed is broad enough to encompass the examples provided by the commenter in relevant circumstances and to provide the Commission with the flexibility to reduce the risk of financial or personal harm to individuals.[14] We believe it is appropriate to retain flexibility in the description as the categories of what constitutes Sensitive PII continue to evolve in light of new technology and expectations of privacy.

The same commenter also suggested that the Commission provide that filers may initiate a request for redaction or removal of information from a submission containing Sensitive PII, including from any submissions made prior to the effectiveness of the rule. The commenter stated that the inclusion of Sensitive PII in historical EDGAR submissions (whether inadvertent or intentional) cannot be retroactively corrected by making an additional filer corrective disclosure. Moreover, the commenter suggested that the rule require the Commission to redact or remove such information if the filer demonstrates that the submission contains Sensitive PII.[15]

The Commission currently receives requests from filers for redaction or removal of information from submissions containing Sensitive PII, and we anticipate continuing to receive and evaluate such requests. We do not believe, however, that the Commission should be required to redact or remove Sensitive PII each time a filer requests it. We believe it is appropriate to retain the flexibility to consider the accuracy of EDGAR information publicly disseminated on the Commission's website, the nature of and circumstances surrounding the Sensitive PII at issue, and the Commission's administrative and technical capacity to address the request. If a filer demonstrates that a submission contains Sensitive PII, the Commission will initially work with the filer to facilitate submission of a version in which the Sensitive PII is redacted. The Commission will then exercise its discretion to determine whether the redacted submission would be adequate or whether additional steps need to be taken pursuant to 17 CFR 232.15(a)(8) (''Rule 15(a)(8)'') (as described below), including potentially removing information from the Commission's website.[16] In any event, regardless of whether there is a request from a filer, the Commission may act to remove, redact, or prevent dissemination of Sensitive PII in a submission pursuant to Rule 15(a)(1) without first notifying the filer or the individual who could experience financial or personal harm if such information was released on EDGAR. The Commission's interest in avoiding a situation in which such information is used to create financial or personal harm may outweigh the need to give notice prior to Commission action, depending on the circumstances.[17] We are therefore adopting this provision of the rule as proposed.

2. Cybersecurity Threats

We are adopting as proposed 17 CFR 232.15(a)(2), which specifies that the Commission may prevent the submission to EDGAR of any submission that poses a cybersecurity threat, including but not limited to, those containing any malware or virus, and communicate as necessary with the filer regarding the submission. As discussed in the Proposing Release, Commission action to address cybersecurity threats in EDGAR submissions will benefit all EDGAR users and promote the reliability and integrity of EDGAR submissions.[18] We received no comments on this aspect of the proposal.

3. System and Commission Staff Errors

We are adopting as proposed 17 CFR 232.15(a)(3), which specifies that if the Commission determines that a submission has not been processed by EDGAR, has been processed incorrectly by EDGAR, or contains an error attributable to the Commission staff, the Commission may correct and/or prevent dissemination of the submission and communicate as necessary with the filer to facilitate filer corrective disclosure. In each of these circumstances, the Commission typically first attempts to correct the error without unduly burdening filers.[19] When necessary, the Commission may work proactively with filers to accomplish filer corrective disclosure.[20] We received no comments on this aspect of the proposal.

4. Incorrect EDGAR Identifiers

We are adopting as proposed 17 CFR 232.15(a)(4), which specifies that the Commission may remove and/or prevent public dissemination of a submission made under an incorrect EDGAR unique identifying number[21] and communicate as necessary with the filer and others to facilitate a filer corrective disclosure. Sometimes, filers make submissions that are not associated with the correct unique identifying number. These errors can create confusion for filers, investors, and other EDGAR users. The Commission may remove the erroneous submission when such errors cannot be resolved by filer corrective disclosure. We received no comments on this aspect of the proposal.

5. EDGAR Access Code Disputes

We are adopting as proposed 17 CFR 232.15(a)(5), which specifies that the Commission may prevent a filer's ability to make submissions if the Commission determines that a dispute exists as to which persons have the authority to make submissions on behalf of the filer, until the dispute is resolved by the disputing parties or by a court of competent jurisdiction. These disputes may arise, for example, when two or more parties each claim control of a filing entity and each demand access to

[13] *See* Proposing Release, *supra* footnote 1, at 58019.

[14] The description of Sensitive PII that the Commission is adopting in Rule 15 is generally consistent with the Privacy Act and other statements of the Commission. *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Release No. 33–10765 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)]; FAST Act Modernization and Simplification of Regulation S–K, Release No. 33–10618 (Mar. 20, 2019) [84 FR 12674 (Apr. 2, 2019)]; Amendments to Forms and Schedules to Remove Provision of Certain Personally Identifiable Information, Release 33–10486 (Apr. 25, 2018) [83 FR 22190 (May 14, 2018)].

[15] *See* Ropes & Gray Comment Letter (stating that the Commission should be required to remove or redact Sensitive PII if a filer demonstrates that the Sensitive PII, if released or allowed to remain publicly available, may result in financial or personal harm to an individual).

[16] *See* Section II.A.8.

[17] After taking action pursuant to Rule 15(a), the Commission will provide notice to the filer and any relevant persons as soon as reasonably practicable. *See* 17 CFR 232.15(b) (''Rule 15(b)'').

[18] *See* Proposing Release, *supra* footnote 1, at 58019.

[19] *See, e.g.,* Proposing Release, *supra* footnote 1, at 58019 (discussing Commission practices of correcting system and Commission staff errors without first communicating with the filer).

[20] 17 CFR 232.103 (Rule 103 of Regulation S–T) addresses concerns that filers may have about liability when issues arise that are not the fault of the filer. Moreover, Rule 13(b) of Regulation S–T makes clear that if a filer in good faith attempts to timely file but the filing is delayed due to technical difficulties beyond the filer's control, the filer may request an adjustment of the filing date of the document.

[21] EDGAR provides each entity a unique identifying number, and submissions made by an entity are associated with that number. If an individual who has access to more than one unique identifying number (for example, a filing agent) were to make a submission for one entity using another entity's number, it erroneously would appear to EDGAR users that the submission is a filing by the unique identifying number holder. *See* 17 CFR 232.10(b).

the entity's EDGAR account. Resolution of such disputes often turns on matters of state corporation law or other factors outside the scope of the Federal securities laws. Under existing practice, the Commission staff has asked the disputing parties to either resolve the dispute themselves or have the matter adjudicated under the relevant state corporation law.[22] The final rule affirms the Commission's ability to take action to ensure that only authorized persons make submissions on behalf of the filer. We received no comments on this aspect of the proposal.

6. Potential Manipulation

We are adopting a modification to proposed Rule 15(a)(6). The proposed rule specified that if the Commission has reason to believe that a submission or an attempted submission may be misleading or manipulative, the Commission may prevent acceptance or dissemination of the submission while evaluating the circumstances surrounding the submission.[23] The proposed rule also specified that the Commission may allow acceptance or dissemination if its concerns are satisfactorily addressed.[24]

After further consideration, we are slightly modifying proposed Rule 15(a)(6) to clarify that the Commission may continue to prevent acceptance or dissemination after it has evaluated the circumstances surrounding the submission if its concerns have not been satisfactorily addressed. If the Commission allows acceptance or dissemination of the submission, the initial or initially attempted filing date will be assigned to the submission, assuming the submission does not implicate other provisions of Rule 15. We received no comments on this aspect of the proposal.

7. Unauthorized Submissions

We are adopting as proposed 17 CFR 232.15(a)(7), which specifies that the Commission may prevent the use of EDGAR access codes if it has reason to believe that there has been an unauthorized submission or an attempt to make an unauthorized submission on EDGAR. Under existing practice, when questions arise as to whether a particular submission or attempted submission was authorized, the Commission seeks to better understand the circumstances surrounding the submission and evaluate what steps, if any, to take in response. Rule 15 specifies that, in such situations, the Commission may prevent any further submissions by the filer or otherwise remove the filer's access to EDGAR. If its concerns are satisfactorily addressed, the Commission will allow the use of EDGAR access codes and permit the submission to proceed, assuming the submission does not implicate other provisions of Rule 15. We received no comments on this aspect of the proposal.

8. Additional Remedial Steps

The Commission cannot anticipate every administrative submission issue that may arise in the future. Thus, we are adopting as proposed Rule 15(a)(8), which specifies the circumstances in which the Commission may take further appropriate steps to address a matter and communicate as necessary with the filer regarding a submission. Specifically, under the rule, the Commission may take such further steps if the Commission has reason to believe that, to promote the reliability and integrity of EDGAR submissions, it must address a submission issue that cannot be addressed solely by filer corrective disclosure or by the actions set forth in paragraphs (a)(1) through (7) of Rule 15. We received no comments on this aspect of the proposal.

9. Notice

Finally, we are adopting as proposed Rule 15(b), which provides that the Commission may act without advance notice to filers or any other person. Specifically, Rule 15(b) provides a method for the Commission to provide notice of its actions under the rule to a filer and any person the Commission determines is relevant to the matter (''relevant person'') as soon as practicable after those actions are taken. In response to commenters, we are clarifying that the term ''relevant person'' encompasses, in appropriate circumstances, a filer's vendor or supplier that made the related submission on behalf of the filer.[25] In addition, relevant persons could include, but are not limited to, parties other than the filer that are involved in code disputes and parties other than the filer that are involved in submissions made in another entity's account. Rule 15(b) provides that the Commission will send written notice and a brief factual statement of the basis for the action by electronic mail to the email address on record in the filer's EDGAR account, and the email address of any relevant persons. The Commission may also send, if necessary, the notice and factual statement by registered, certified, or express mail to the physical address on record in the filer's EDGAR account and the physical address of any relevant persons. The notice provides the filer and relevant persons an opportunity to bring pertinent information to the Commission's attention and will help facilitate prompt resolution of submission issues.

Three commenters were generally supportive of the proposed rule but expressed concern that the Commission may redact information from a submission without first contacting the filer.[26] The commenters requested that filers be notified prior to any Commission action in the proposed rule, if possible. The commenters recognized, however, that there may be situations where advance notification would not be feasible and, in such situations, they agreed with the Commission's proposal to notify the filer and relevant persons as soon as possible after the action is taken.

As discussed in the Proposing Release, the Commission typically communicates and works with filers to address submission issues, and the Commission anticipates that it generally will continue to work with filers in advance of taking action under the rule.[27] At the same time, the final rule allows the Commission the necessary flexibility to take action promptly to avoid harm to investors and other EDGAR users who depend upon the accuracy of the information disseminated by EDGAR.[28] For example, as discussed above, the Commission has sought to reduce the risk that Sensitive PII included in EDGAR submissions may result in financial or personal harm to individuals.[29] Immediate Commission action may also be necessary to avoid potential threats to EDGAR, to prevent the dissemination of unauthorized or potentially false or misleading submissions, or to prevent the improper

[22] When a dispute arises between parties, each of whom claims to be the legitimate corporate representative—which may occur after a leadership change at a filing entity—the Commission staff typically prevents future submissions until the parties can reach an agreement, or a party is able to provide a court order designating the appropriate corporate representative.

[23] *See* Proposed Rule 15(a)(6). *See also* Proposing Release, *supra* footnote 1, at 58020 (discussing examples of submissions or attempted submissions that may be misleading or manipulative).

[24] *See* Proposed Rule 15(a)(6).

[25] *See* XBRL US Comment Letter I; JT Foxx Comment Letter; Auto Connection Comment Letter (requesting that the Commission always consider an issuer's vendor or supplier to be a relevant person when the Commission provides notice of its actions to a filer and any relevant person).

[26] *Id.*

[27] *See* Proposing Release, *supra* footnote 1, at 58020.

[28] *Id.*

[29] *See* Section II.A.1 and Proposing Release, *supra* footnote 1, at 58019.

use of filers' EDGAR accounts.[30] In addition, we are mindful that administrative actions under the proposed rule should not unduly hinder or delay the EDGAR submission process.[31] We believe that Rule 15, including its notice provision, balances the need to reduce the risk of financial or personal harm to individuals from the disclosure of Sensitive PII, address potential threats, and other circumstances as described above with the need to timely disseminate EDGAR submissions. We are therefore adopting this provision of the rule as proposed.

B. Amendment to the Delegations of the Authority of the Commission

The Commission is adopting new Rule 30–19 of the Rules of Organization and Program Management to delegate authority to the Director of the EDGAR Business Office to take action under Rule 15 and two other rules in Regulation S–T: (i) Rule 13(b), to adjust the filing date of an electronic filing; and (ii) Rule 202, to set the terms of, and grant or deny as appropriate, continuing hardship exemptions from the electronic submission requirements.[32] This delegated authority is designed to conserve Commission resources by permitting Commission staff to carry out the Commission's efficient administration of EDGAR. The Commission staff may nevertheless submit matters to the Commission for consideration, as it deems appropriate.

III. Economic Analysis

We have carefully considered the economic effects of final Rule 15 under Regulation S–T.[33] The final rule increases transparency for filers, investors, and other users of EDGAR by specifying the actions the Commission may take to resolve certain administrative issues. Increased transparency about Commission actions will create benefits for both filers and users, because filers and users will know the types of actions they can expect the Commission to take to promote the reliability and integrity of EDGAR submissions. However, we anticipate these benefits will be limited as Rule 15 largely codifies actions that the Commission currently takes to promote the reliability and integrity of EDGAR submissions. For the same reason, we do not expect filers to incur additional costs. Further, we anticipate that the final rule will marginally improve efficiency, but will not have a significant effect on competition or capital formation. Because we generally cannot predict the need for or extent of corrective actions the final rule will address, we cannot quantify the anticipated economic effects of future corrective actions. Furthermore, the Commission received no comments responding to the Proposing Release's request for comments on the economic analysis and any relevant empirical data, estimation methodologies, or factual support. Therefore, the analysis that follows provides primarily a qualitative assessment of the likely economic effects.

A. Economic Baseline

The Commission's current processes and procedures for resolving the enumerated administrative issues listed in the final rule and discussed above serve as the baseline against which we assess the final rule. This section discusses, as it relates to this rulemaking, filers' current usage of EDGAR and the Commission's processes for administering EDGAR.

Because of the variety of administrative issues that may arise in connection with EDGAR submissions, the Commission has developed procedures for identifying and addressing the issues described above, although the Commission has not published those procedures. Where possible, the Commission currently communicates with relevant filers to facilitate filer corrective disclosure to address problematic submissions. While filer corrective disclosure addresses the majority of known EDGAR submission issues, there are circumstances in which working with a filer does not address problematic submissions, such as when the filer is uncooperative or the Commission cannot validate a filer's authorization to make submissions. Additionally, in limited cases, the Commission has responded promptly to submission issues without first consulting relevant filers in order to avoid harm to investors and other EDGAR users who depend upon the accuracy of the information disseminated by EDGAR. For these submissions, the Commission acts expediently to minimize the time the public and the Commission are exposed to such harm. While the Commission typically notifies these filers of its actions afterwards, some filers may not know specifically why the Commission took action or the nature of the issue with the submission.

B. Costs and Benefits

The final rule specifies the actions the Commission may take with respect to specific administrative issues that impact the Commission's ability to promote the reliability and integrity of EDGAR submissions. We believe the final rule will provide increased transparency about the Commission's administrative processes, which in turn may benefit filers and improve the Commission's efficiency in administering EDGAR. We believe, however, that Rule 15 would have limited economic effects because the rule largely codifies actions that the Commission may already take.

More transparency into how the Commission administers EDGAR may benefit filers in two ways. First, by specifying the types of issues for which the Commission may take action, the final rule could encourage filers to take additional actions to prevent these issues if they believe the benefits exceed the costs of preventative actions. Second, when the Commission must act to address a problematic submission prior to notifying a filer or when an issue cannot be addressed solely by a filer corrective disclosure, the final rule's formal notification requirement ensures that filers will receive timely notification of Commission action. To the extent that this requirement results in the Commission notifying filers of issues that they can correct, such as incorrect EDGAR identifiers, EDGAR access code disputes, or potentially misleading filings, filers may be able to benefit from rectifying issues sooner than they would have prior to the rule.[34]

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[30] *See* Proposing Release, *supra* footnote 1, at 58020.

[31] *Id.*

[32] The functions in new Rule 30–19 are performed by the Director of the EDGAR Business Office or under the Director's direction by such other person or persons as may be designated from time to time by the Chairman of the Commission. Functions related to filing date adjustments pursuant to Rule 13(b) and continuing hardship exemptions pursuant to Rule 202 would be performed after consultation with the division or office with primary regulatory oversight for the relevant filing. *See* new Rule 30–19.

[33] Section 2(b) of the Securities Act of 1933 (''Securities Act''), Section 3(f) of the Securities Exchange Act of 1934 (''Exchange Act''), and Section 2(c) of the Investment Company Act of 1940 (''Investment Company Act'') require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[34] In addition to filers, the Commission may work with EDGAR filing agents, counsel, and other

Continued

Because the final rule informs filers of possible actions the Commission may take and the Commission's process to promote the reliability and integrity of EDGAR submissions, the final rule will improve the efficiency of administering EDGAR. This benefit is likely to be limited because the Commission will continue to resolve most issues by contacting filers to facilitate filer corrective disclosure. Since filers may submit fewer filings with errors and the Commission and filers will be able to more quickly correct errors, the final rule could lead to more timely and accurate information in EDGAR, benefiting investors, research analysts, data aggregators, and other financial professionals.[35] Moreover, since the Commission, as the administrator of EDGAR, already takes corrective actions to promote the reliability and integrity of EDGAR submissions, we do not expect filers to incur additional costs in connection with these improvements. The Commission generally cannot predict the need for or the extent of corrective actions, so we cannot quantify the informational efficiency benefits from future corrective actions.

To the extent that the final rule reduces the number of cybersecurity threats or reduces the administrative frictions in preventing cybersecurity threats, there may be benefits to the users of EDGAR.[36] In particular, users, including investors, analysts, asset managers, and data collection companies, may incur fewer costs associated with cleaning or repairing systems and recovering data.[37] Furthermore, individuals, investors, companies, and asset managers, among others, may benefit from the prevention of cybersecurity attacks that disrupt the dissemination of filings through EDGAR or obtain confidential or protected financial information on the Commission's or users' systems.

Lastly, because EDGAR submissions generally do not require Sensitive PII,[38] and current Commission practices seek to identify and redact Sensitive PII, we do not anticipate that the final rule specifying that the Commission may redact, remove and/or not disseminate EDGAR submissions containing Sensitive PII will have a substantial economic effect.

IV. Administrative Law Matters

The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act (''APA''), that these amendments relate solely to agency organization, procedure, or practice and do not constitute a substantive rule. They are therefore not subject to the provisions of the APA requiring notice of rulemaking, opportunity for public comment, and advance publication of the amendments prior to their effective date. These changes are effective on February 3, 2021. Additionally, the Regulatory Flexibility Act of 1980 [39] therefore does not apply. Nevertheless, we previously determined that it would be useful to publish the proposed amendments for notice and comment before adoption. The Commission has considered all comments received. Because these amendments relate to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,'' they are not subject to Small Business Regulatory Enforcement Fairness Act of 1996.[40] These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.[41]

V. Statutory Basis and Text of Rule Amendments

The amendments to Regulation S–T—General Rules and Regulations for Electronic Filings are adopted pursuant to statutory authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act,[42] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Exchange Act,[43] Section 319 of the Trust Indenture Act of 1939,[44] and Sections 8, 30, 31, and 38 of the Investment Company Act.[45] The amendments to the Commission's Rules of Organization and Program Management are adopted pursuant to statutory authority granted to the Commission, including Section 19 of the Securities Act of 1933, 15 U.S.C. 77s; Sections 4A, 4B, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78d–2, and 78w; Section 38 of the Investment Company Act of 1940, 15 U.S.C. 80a–37; Section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–11; and

entities to correct administrative issues. As with filers, these entities may incur lower costs if they are notified and can rectify issues with EDGAR submissions sooner.

[35] *See generally* Michael S. Drake, Darren T. Roulstone, and Jacob R. Thornock, *The Determinants and Consequences of Information Acquisition via EDGAR,* 32 Contemporary Accounting Research 3 (2016) (Most EDGAR users access the database a few times per quarter around corporate events such as restatements, earnings announcements, and acquisition announcements. This activity is related to, but distinct from, financial press articles. A small subset of users access EDGAR daily for multiple filings.); Jonathan L. Rogers, Douglas J. Skinner, and Sarah L. C. Zechman, *Run EDGAR Run: SEC Dissemination in a High-Frequency World,* Chicago Booth Research Paper No. 14–36 (Feb. 17, 2017) (finding that for a sample of Form 4 filings, there was an economically significant advantage to accessing data because of then-existing lags between the Commission's EDGAR website and the public dissemination feed); Brian Gibbons, Peter Iliev, and Jonathan Kalodimos, *Analyst Information Acquisition via EDGAR,* Working Paper (Nov. 15, 2019) (finding that information acquisition from EDGAR is associated with smaller analyst forecast errors); Peter Iliev, Jonathan Kalodimos, and Michelle Lowry, *Investors' Attention to Corporate Governance,* 9th Miami Behavioral Finance Conference 2018 (Jul. 16, 2020) (using EDGAR log files, finding that investors conduct significant research into corporate governance, particularly for large firms, firms with low managerial entrenchment, and those with meetings outside of the proxy season); Huaizhi Chen, Lauren Cohen, Umit Gurun, Dong Lou, and Christopher J. Malloy, *IQ from IP: Simplifying Search in Portfolio Choice,* NBER Working Paper No. 24801 (Apr. 20, 2019) (using EDGAR log data, shows institutional investors tracked management teams and insider-trading filings of firms); and Zhongling Qin, *Measuring Attention: The Case of Amendments to 10K Annual Reports,* Working Paper (Nov. 15, 2019) (showing consistently higher trading volume once there are enough attentive readers of 10–K/A filings, as defined by whether the readers read the original 10–K filings, though consistent with gradual diffusion of information). *But see* Stefano DellaVigna and Joshua M. Pollet, *Investor Inattention and Friday Earnings Announcements,* 64 J. of Fin. 2 (Mar. 13, 2009) (finding less immediate response for Friday announcements than for announcements on other days, consistent with investor inattention); and Tim Loughran and Bill McDonald, *The Use of EDGAR Filings by Investors,* J. of Behavioral Fin. Forthcoming (Dec. 4, 2016) (showing that the average publicly traded firm has its annual report accessed only 28.4 times on the day of and day after the filing, though other filings such as initial public offering filings are more quickly consumed).

[36] Under current practice, the Commission immediately prevents submissions to EDGAR of any submission that poses cybersecurity risks once the Commission identifies them. Furthermore, the Commission has already promulgated a rule addressing the removal of submissions or parts of submissions that contain executable code. 17 CFR 232.106.

[37] *See* The Council of Econ. Advisers, The Cost of Malicious Cyber Activity to the U.S. Economy (Feb. 2018). Available at: *https://www.whitehouse.gov/wp-content/uploads/2018/03/The-Cost-of-Malicious-Cyber-Activity-to-the-U.S.-Economy.pdf* (estimating that in 2016, malicious cyber activity cost the U.S. economy between $57 and $106 billion through denial of service attacks, disruption of business activity, or destruction or theft of proprietary and strategic information).

[38] In 2018, the Commission amended forms and schedules to eliminate requirements to provide certain personally identifiable information. *See* PII Form Amendments Release, *supra* footnote 11. Also, in the EDGAR Filer Manual, the Commission advises against including social security numbers in filings submitted to the Commission. *See https://www.sec.gov/info/edgar/edgarfm-vol2-v47.pdf.* Some forms may require Sensitive PII in certain circumstances. For example, Form 20–F requires dates of birth of a company's directors and senior management if required to be reported in the home country or otherwise publicly disclosed by the company. Additionally, Forms MA and Funding Portal require IRS Tax numbers if CRD numbers are unavailable. IRS Tax numbers also are required on Form SBSE if CRD numbers, IARD numbers, and foreign business numbers are unavailable.

[39] 5 U.S.C. 601 *et seq.*

[40] 5 U.S.C. 801 *et seq.*

[41] 44 U.S.C. 3501 *et seq.*

[42] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[43] 15 U.S.C. 78c, 78d–1, 78d–2, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78w, and 78*ll.*

[44] 15 U.S.C. 77sss.

[45] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

Section 3 of the Sarbanes–Oxley Act of 2002, 15 U.S.C. 7202.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

For the reasons discussed above, we are amending 17 CFR chapter II as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A–Organization and Program Management

■ 1. The general authority citation for part 200, subpart A, continues to read as follows:

Authority: 15 U.S.C. 77c, 77*o*, 77s, 77z–3, 77sss, 78d, 78d–1, 78d–2, 78*o*–4, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.,* unless otherwise noted.

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■ 2. Add § 200.30–19 to read as follows:

§ 200.30–19 Delegation of authority to Director of the EDGAR Business Office.

Pursuant to the provisions of Public Law 100–181, 101 Stat. 1254, 1255 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Director of the EDGAR Business Office, to be performed by the Director or under the Director's direction by such other person or persons as may be designated from time to time by the Chairman of the Commission:

(a) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and part 232 of this chapter (Regulation S–T), to grant or deny a request submitted pursuant to § 232.13(b) of this chapter to adjust the filing date of an electronic filing, after consultation with the division or office with primary regulatory oversight for the relevant filing.

(b) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and part 232 of this chapter (Regulation S–T) to set the terms of, and grant or deny as appropriate, continuing hardship exemptions pursuant to § 232.202 of this chapter from the electronic submission requirements of Regulation S–T, after consultation with the division or office with primary regulatory oversight for the relevant filing.

(c) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), and part 232 of this chapter (Regulation S–T) to take actions pursuant to § 232.15 of this chapter to promote the reliability and integrity of submissions made through the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR).

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 3. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Add § 232.15 to read as follows:

§ 232.15 Administration of EDGAR.

(a) In its administration of EDGAR, the Commission may take the following actions to promote the reliability and integrity of submissions made through EDGAR.

(1) If the Commission determines that a submission contains personally identifiable information that if released may result in financial or personal harm to an individual, which may comprise a single item of information or a combination of two or more items, the Commission may redact such information from the submission, prevent dissemination of the submission, and/or remove the submission from the Commission's public website, and may communicate as necessary with the filer to facilitate submission of a version in which such information is redacted;

(2) The Commission may prevent the submission to EDGAR of any submission that poses a cybersecurity threat, including but not limited to, submissions containing any malware or virus, and may communicate as necessary with the filer regarding the submission;

(3) If the Commission determines that a submission has not been processed by EDGAR, or has been processed incorrectly by EDGAR, or contains an error attributable to the Commission staff, the Commission may correct and/or prevent public dissemination of the submission and may communicate with the filer as necessary to facilitate the filer's submission of an amendment to, or a notice of withdrawal of, the filer's submission (a ''filer corrective disclosure'');

(4) If the Commission determines that a submission is made under an incorrect EDGAR unique identifying number, the Commission may remove and/or prevent public dissemination of the submission and may communicate with the filer as necessary to facilitate a filer corrective disclosure;

(5) If the Commission determines that a dispute exists regarding the authority to make submissions on behalf of a filer, the Commission may prevent a filer's ability to make submissions until the dispute is resolved by the disputing parties or by a court of competent jurisdiction;

(6) If the Commission has reason to believe that an attempted submission may be misleading or manipulative, the Commission may prevent acceptance or dissemination of the submission unless, after evaluating the circumstances surrounding the submission, the Commission's concerns are satisfactorily addressed;

(7) If the Commission has reason to believe that a filer has made an unauthorized submission or attempted to make an unauthorized submission, the Commission may prevent any further submissions by the filer or otherwise remove the filer's access to EDGAR; and

(8) If the Commission otherwise has reason to believe that, to promote the reliability and integrity of submissions made through EDGAR, it must address a submission issue that cannot be addressed solely by filer corrective disclosure or by the actions set forth in paragraphs (a)(1) through (7) of this section, the Commission may take such further steps as are appropriate to address the matter and communicate as necessary with the filer regarding the submission.

(b) The Commission may act under paragraph (a) of this section without providing advance notice to the filer or any other person. As soon as reasonably practicable after taking action under paragraph (a) of this section, the Commission will provide written notice and a brief factual statement of the basis for the action to the filer and any other person the Commission determines is relevant to the matter (''relevant persons''). The Commission will send the notice and factual statement by electronic mail to the email address on record in the filer's EDGAR account, and to the email address of any relevant persons. The Commission may also send, if necessary, the notice and factual statement by registered, certified, or express mail to the physical address on record in the filer's EDGAR account and the physical address of any relevant persons.

(c) Nothing in this section prevents a filer from addressing an error or mistake in the filer's submission by making a filer corrective disclosure.

By the Commission.

Dated: December 11, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–28273 Filed 2–2–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–10902; 34–90637; 39–2536, IC–34137]

Adoption of Updated EDGAR Filer Manual, Proposed Collection and Comment Request for Form ID

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting revisions to Volumes I and II of the Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') Filer Manual (''EDGAR Filer Manual'' or ''Filer Manual'') and related rules. The revisions substantially reduce the length of Volume I, and amend Volume I and related rules under Regulation S–T, including provisions regarding electronic notarizations and remote online notarizations, which include electronic signatures. The revisions to Volume II reflect changes made to EDGAR on December 14, 2020. The Commission is also providing notice and soliciting comments on the Form ID collection of information pursuant to the Paperwork Reduction Act of 1995.

DATES: *Effective date:* February 3, 2021. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the **Federal Register** as of February 3, 2021.

Comments date: Comments regarding the Form ID collection of information requirement for purposes of the Paperwork Reduction Act of 1995 should be received on or before March 1, 2021.

FOR FURTHER INFORMATION CONTACT: For questions regarding updates to the Filer Manual and the related rule amendments, please contact Rosemary Filou, Chief Counsel; Monica Lilly, Senior Special Counsel; or Jane Patterson, Senior Counsel; in the EDGAR Business Office at 202–551–3900, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549. For questions regarding the submission form types allowing eligible business development companies and other closed-end investment companies to file automatic shelf registration statements and corresponding post-effective amendments and the submission form types for securities fee registration payments by closed-end investment companies, please contact Heather Fernandez in the Division of Investment Management at (202) 551–6708. For questions regarding the exhibits available for Regulation A form types, please contact Christian Windsor, Senior Special Counsel, in the Division of Corporation Finance at (202) 551–3419. For questions regarding the internal control over financial reporting (''ICFR'') auditor attestation, please contact Christian Windsor, Senior Special Counsel, in the Division of Corporation Finance at (202) 551–3419, or for questions regarding the related changes to the EDGAR XBRL validation, please contact the Office of Structured Disclosure in the Division of Economic and Risk Analysis at (202) 551–5494.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 36 (December 2020) and Volume II: ''EDGAR Filing,'' Version 56 (December 2020) and amendments to 17 CFR 232.10 (''Rule 10''), 17 CFR 232.12 (''Rule 12''), and 17 CFR 232 301 (''Rule 301'') under 17 CFR 232.10 through 232.903 (''Regulation S–T''). The updated Filer Manual volumes are incorporated by reference into the Code of Federal Regulations. The revisions substantially reduce the length of Volume I of the Filer Manual while retaining the procedural requirements for making electronic submissions on EDGAR. The Volume I revisions also clarify the legal consequences of misstatements or omissions of fact in EDGAR submissions, and inform filers of the Commission's authority regarding submissions on EDGAR. The Commission is also amending Volume I of the Filer Manual and a related rule under Regulation S–T to allow applicants for EDGAR access to use electronic notarizations and remote online notarizations, which include electronic signatures, in addition to notarizations that include manual signatures. Moreover, the Commission is amending the same rule to exempt the notarized document requirements for EDGAR access from certain signature requirements in another rule under Regulation S–T. In addition, the Commission is amending a rule under Regulation S–T to reflect the Commission's current hours for submission of electronic filings. As a separate matter, the Commission is adopting amendments to Volume II of the Filer Manual to reflect changes made to EDGAR on December 14, 2020. Finally, the Commission is providing notice and soliciting comments on the Form ID collection of information pursuant to the Paperwork Reduction Act of 1995.

I. Background

Volume I of the Filer Manual provides general information regarding electronic submissions to the Commission on EDGAR, including information concerning requirements for becoming an EDGAR filer.[1] The Commission is substantially reducing the length of Volume I of the Filer Manual while retaining the procedural requirements for making electronic submissions on EDGAR. The revisions remove unnecessary and outdated content from Volume I, and relocate basic instructions and technical explanations to a newly designed web page on the Commission's website.

In addition, the Commission is:

• Enhancing the statement in Volume I about the consequences of making false statements or omissions of fact in EDGAR submissions, and informing filers of the authority of the Commission to, and some of the circumstances in which the Commission may, prevent acceptance or dissemination of an attempted submission on EDGAR or revoke EDGAR access;

• Amending Rule 10 of Regulation S–T [2] and Volume I of the Filer Manual to accept electronic notarizations and remote online notarizations, which include electronic signatures, in addition to notarizations that include

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. The most recent update to the Filer Manual was Volume II: ''EDGAR Filing,'' Version 55 (November 2020). *See* Electronic Signatures in Regulation S–T Rule 302, Release No. 33–10889 (Nov. 17, 2020) [85 FR 78224] (''Electronic Signatures Release'').

[2] *See* 17 CFR 232.10(b) (''Rule 10(b)'').

manual signatures, to support requests for EDGAR access;

• Amending Rule 10 of Regulation S–T to exclude the authentication document in Rule 10(b) from the signature requirements of 17 CFR 232.302 (''Rule 302''); [3]

• Amending Rule 12 of Regulation S–T to reflect the Commission's current hours for submission of electronic filings and to conform to the Filer Manual; [4]

• Making amendments to Volume II of the Filer Manual corresponding to the EDGAR updates in Release 20.4; and

• Providing notice and soliciting comments on potential changes to the burden estimates associated with the Form ID collection of information pursuant to the Paperwork Reduction Act of 1995.[5]

II. Amendments to Volume I of the Filer Manual and Rule 10 of Regulation S–T

The updated Volume I of the Filer Manual retains and streamlines procedural requirements pertaining to EDGAR filing times, access, maintaining accurate information, paying filing fees, and prohibiting submission of social security numbers to EDGAR. The updated Volume I omits extensive step-by-step instructions and elementary technical explanations including EDGAR screen shots and error messages, an explanation of browsers, and a glossary of terms. The Commission is making accessible, user-friendly instructions and information available to filers on the recently revised ''EDGAR Information for Filers'' web page on *SEC.gov*.[6] Moreover, filers may consult relevant topical Commission division or office web pages.[7]

The Commission is also removing technical explanations from Volume I of the Filer Manual that existed to assist a sub-section of filers who opted to use private industry software to construct filings outside of EDGAR, including using the Extensible Markup Language (XML) format.[8] These technical specifications are available to filers on the ''EDGAR Information for Filers'' web page on *SEC.gov*.[9]

Further, the updated Volume I of the Filer Manual clarifies the statement informing filers of the consequences of false statements or omissions of fact in submissions to EDGAR. Previously, Volume I only referenced potential criminal liability for intentionally making false statements or omissions of fact in submissions to the Commission in violation of 18 U.S.C. 1001.[10] However, it is also possible that false statements or omissions of fact in submissions to EDGAR could give rise to violations of other criminal or civil statutes or regulations, including the antifraud and civil liability provisions of the federal securities laws.[11] Accordingly, we have amended Volume I of the Filer Manual to make clear that misstatements or omissions of fact in a submission to the Commission on EDGAR may constitute a criminal violation under 18 U.S.C. 1001 and/or a violation of other criminal or civil laws.[12] Moreover, the Commission has added an explicit notice to filers in Volume I of the authority of, and certain circumstances in which the Commission may, prevent acceptance or dissemination of an attempted submission on EDGAR or revoke EDGAR access.[13]

Rule 10 of Regulation S–T previously required filers to submit a manually signed and notarized document as part of the application for EDGAR access.[14] Volume I further mandated that the filer's authorized signatory sign and have notarized a printed copy of the completed online application.[15] Since these provisions were adopted, technological advancements have made electronic notarization and remote online notarization, which include electronic signatures, possible, and electronic notarization and remote online notarization are now recognized in most states.[16] These methods of notarization will provide an efficient means of authenticating signatures in connection with requests for EDGAR access and avoid the challenges associated with disruptions to in-person notary services caused by natural disasters, pandemics, and similar events. Remote online notarization in particular would allow filers to notarize EDGAR access requests from a convenient location using a state-registered remote notary public.

Therefore, the Commission is updating Regulation S–T and Volume I of the Filer Manual to clarify that the Commission will accept electronic notarization and remote online notarization, which include electronic signatures, in connection with EDGAR access requests submitted pursuant to Rule 10 of Regulation S–T.[17] In addition, the Commission is permitting foreign filers to use the foreign local equivalent of a notary public or to obtain remote online notarization recognized by the law of any state or

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[3] *See* 17 CFR 232.10(c) (''Rule 10(c)''); *see also* Rule 302.

[4] *See* 17 CFR 232.12(c) (''Rule 12(c)'').

[5] 44 U.S.C. 3501 *et seq.*

[6] *See* EDGAR—Information for Filers available at *https://www.sec.gov/edgar/filer-information.* The Commission staff has improved the architecture and content on the EDGAR Information for Filers web page, including the addition of an extensive How Do I guide which contains some of the information that previously was included in the EDGAR Filer Manual: Volume I ''General Information,'' Version 35. *See* How Do I guide available at *https://www.sec.gov/edgar/filer-information/how-do-i.*

[7] For example, filers may consult the Series and Class (Contract) Identifiers information page on *SEC.gov* available *at https://www.sec.gov/info/edgar/ednews/seriesclassfaq063006.htm* for guidance on this topic, and the Filing Fees Branch homepage available at *https://www.sec.gov/page/ffbsectionlanding* for information about filing fees.

[8] *See* EDGAR Filer Manual, Volume I, Version 35, Section 6.4.

[9] Certain technical specifications are replicated in Volume II of the Filer Manual. *See, e.g.,* EDGAR Filer Manual, Volume II, Version 54, Section 9.

[10] *See* EDGAR Filer Manual, Volume I, Version 35, Section 3.1.

[11] *See, e.g.,* Sections 11, 12(a)(2), and 17(a)(2) of the Securities Act of 1933.

[12] *See* EDGAR Filer Manual, Volume I, Version 36, Section 1.

[13] *See* EDGAR Filer Manual, Version 36, Volume I, Section 1. Rule 15 specifies in more detail the Commission's ability to prevent submissions to EDGAR. *See* Release No. 33–10901 (Dec. 11, 2020).

[14] *See* Rule 10(b).

[15] *See* EDGAR Filer Manual, Volume I, Version 35, Section 3.2.2.2.4.

[16] Currently, over 36 states have enacted electronic notarization laws, while 25 states have enacted remote online notarization laws (certain of the latter group of states have not yet fully implemented remote online notarization). In addition, due to the COVID–19 pandemic, 34 states (including several that have not yet fully implemented remote online notarization) have issued emergency orders temporarily authorizing notaries to perform remote online notarization. *See* What States Allow Electronic Notary, DocVerify, *https://www.docverify.com/Products/E-Notaries/What-States-Allow-Electronic-Notary;* Remote Notarization: What You Need to Know, National Notary Association (November 13, 2020), *https://www.nationalnotary.org/notary-bulletin/blog/2018/06/remote-notarization-what-you-need-to-know;* Answers To Urgent Questions Notaries Are Asking About Remote Online Notarization, National Notary Association (Aug. 14, 2020), *https://www.nationalnotary.org/notary-bulletin/blog/2020/03/answers-urgent-questions-notaries-ron.*

[17] *See* amended Rule 10(b) (removing the manual signature requirement for EDGAR access requests) and EDGAR Filer Manual, Volume I, Version 36, Section 3 (''The notarized signature of an authorized individual must be obtained by manual, electronic, or remote online notarization recognized by the law of any state or territory of the United States or the District of Columbia, and must include a manual or electronic signature of the authorized individual, as required by the notary for the type of notarization at issue. Foreign filers who do not have access to a United States notary public must use the foreign local equivalent of a notary public or obtain notarization by a remote online notary recognized by the law of any state or territory of the United States or the District of Columbia.''). Under the amendments, remote online notarization valid in any of the 50 states, United States territories, or the District of Columbia would be accepted, regardless of the location of the applicant, under the theory that a validated notary in any of these locations would suffice for federal identity verification purposes.

territory of the United States or the District of Columbia.[18]

Finally, we are revising Rule 10 to exclude the authentication document required by Rule 10 from the signature requirements of Rule 302 of Regulation S–T.[19] Among other things, Rule 302 requires signatures to any electronic submission to be in typed form, rather than manual format, and provides various signature authentication requirements related to typed signatures.[20] Since Rule 10 currently requires filers to submit a manually signed authentication document, that authentication document is not subject to the requirements of Rule 302. However, since as discussed above we are removing the manual signature requirement from Rule 10 to permit electronic notarization and remote online notarization, which include electronic signatures, the authentication document required by Rule 10 would be subject to Rule 302's signature authentication requirements unless excluded from its provisions. Since Rule 10 already provides separate signature authentication requirements,[21] we do not believe it is necessary to require filers seeking EDGAR access to comply with the signature authentication requirements of both Rule 10 and Rule 302.

III. Amendments to Rule 12, Regulation S–T

The Commission is amending Rule 12(c) of Regulation S–T to reflect that electronic filings and other documents may be submitted ''from 6 a.m. to 10 p.m., Eastern Time'' instead of ''by direct transmission, via dial-up modem or internet . . . from 8 a.m. to 10 p.m., Eastern Standard Time or Daylight Saving Time, whichever is currently in effect.'' We are removing an antiquated and unnecessary reference to the method of submission and adjusting the filing times to reflect the Commission's current practice and the correct filing times set forth in the Filer Manual.[22]

IV. Edgar Release 20.4 and Amendments to Volume II of the Filer Manual

EDGAR was updated in Release 20.4, and corresponding amendments to Volume II of the Filer Manual are being made to reflect these changes, described below.

On April 8, 2020, the Commission adopted rules to modify the registration, communications, and offering processes for business development companies and other closed-end investment companies including allowing such eligible entities to file automatic shelf registration statements (ASRs) and corresponding post-effective amendments (POSASRs).[23] EDGAR Release 20.4 adds the following new submission form types: N–2ASR: Automatic shelf registration statement on Form N–2 for well-known seasoned issuers; and N–2 POSASR: Post-effective amendment to an automatic shelf registration statement on Form N–2 for well-known seasoned issuers. EDGAR Release 20.4 also adds new header data elements to the following submission form types: N–2, N–2/A, N–2MEF, POS 8C, 486APOS, 486BPOS, and 486BXT. In the Securities Offering Reform Release, the Commission also adopted amendments to modernize its approach to securities fee registration payment by requiring closed-end investment companies that operate as ''interval funds'' to pay securities registration fees using the same method as mutual funds and exchange-traded funds. EDGAR Release 20.4 adds a new header data element to the following submission form types: N–2, N–2/A, N–14 8C, N–14 8C/A, and N–14MEF. EDGAR Release 20.4 also allows filers to itemize share class information on submission form types 24F–2NT and 24F–2NT/A, when the investment company type is ''N–2.'' See Chapter 3 (Index to Forms), Chapter 4 (Filing Fee Information), Chapter 7 (Preparing and Transmitting EDGARLink Online Submissions), Appendix A (Messages Reported by EDGAR), and Appendix C (EDGAR Submission Types) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

On March 12, 2020, the Commission adopted a requirement that issuers include a check box on the cover page of their Forms 10–K, 20–F, and 40–F annual reports to disclose whether they have obtained an ICFR auditor attestation under section 404(b) of the Sarbanes-Oxley Act.[24] EDGAR Release 20.4 updates the EDGAR XBRL validation to require an ICFR auditor attestation flag on the following submission form types: 10–K, 10–K/A, 10–KT, 10–KT/A, 20–F, 20–F/A, 40–F, and 40–F/A. This flag is a part of the XBRL DEI–2020 Taxonomy. See Chapter 6 (Interactive Data) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

On March 2, 2020, the Commission adopted amendments to the financial disclosure requirements for guarantors and issuers of guaranteed securities registered or being registered, and added a new exhibit requirement for Securities Act of 1933 registration statements and Securities Exchange Act of 1934 periodic reports, as well as Regulation A offering statements and reports, to improve those requirements for both investors and registrants.[25] The amendments made new exhibits available for Regulation A form types to permit filers to identify subsidiaries that provide guarantees. Filers have the option to attach these new exhibits officially in HTML or ASCII format (and unofficially in PDF format). Accordingly, EDGAR Release 20.4 adds the following new exhibits:

- ''EX1A–17 GNTR/ISSR'' on form types DOS, DOS/A, 1–A, 1–A/A, and 1–A POS;
- ''EX1K–17 GNTR/ISSR'' on form types 1–K and 1–K/A;
- ''EX1SA–17 GNTR/ISSR'' on form types 1–SA and 1–SA/A;
- ''EX1U–17 GNTR/ISSR'' on form types 1–U and 1–U/A; and
- ''ADD EXHB'' on form types DOS, DOS/A, 1–A, 1–A/A, 1–A POS, 1–K, 1–K/A, 1–SA, 1–SA/A, 1–U, and 1–U/A.

To simplify future updates to the exhibits for these forms, EDGAR Release 20.4 adds ''ADD EXHB'' on form types DOS, DOS/A, 1–A, 1–A/A, 1–A POS, 1–

[18] *See* EDGAR Filer Manual, Volume I, Version 36, Section 3.

[19] *See* amended Rule 10(c); *see also* Rule 302.

[20] The Commission recently amended Rule 302 to permit the use of electronic signatures in signature authentication documents required to be executed and retained in connection with EDGAR filings. *See* Electronic Signatures Release, *supra* note 1. Amended Rule 302 provides, among other things, that each signatory to an electronic filing shall manually or electronically sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing (''authentication document''). Rule 302 further provides that an electronically signed authentication document must meet certain requirements set forth in the EDGAR Filer Manual and that each signatory who electronically signs an authentication document pursuant to Rule 302 must manually sign a document attesting that, when using electronic signatures for purposes of Rule 302, the use of such electronic signature constitutes the legal equivalent of such individual's manual signature for purposes of authenticating the signature to any filing for which it is provided.

[21] As discussed above, Rule 10 of Regulation S–T provides that filers must submit a signed and notarized document as part of the application for EDGAR access. *See supra* note 14 and accompanying text.

[22] *See* EDGAR Filer Manual, Volume I, Version 36, Section 2 (''The SEC accepts electronic submissions on EDGAR . . . from 6 a.m. to 10 p.m. Eastern Time.''). This information was also included in previous versions of the Filer Manual. *See, e.g.,* EDGAR Filer Manual, Version 35, Volume I, Section 2.2 (''EDGAR accepts . . . new filings . . . from 6:00 a.m. to 10:00 p.m., Eastern Time.'').

[23] *See* Securities Offering Reform for Closed-End Investment Companies, Release No. 33–10771 (Apr. 8, 2020) [85 FR 33290] (''Securities Offering Reform Release'').

[24] *See* Accelerated Filer and Large Accelerated Filer Definitions, Release No 34–88365 (Mar. 12, 2020) [85 FR 17178].

[25] *See* Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities, Release No. 33–10762 (Mar. 2, 2020) [85 FR 21940].

K, 1–K/A,1–SA, 1–SA/A, 1–U, and 1–U/A. The ''ADD EXHB'' exhibit will replace the EX1A–15 ADD EXHB, EX1K–15 ADD EXHB, EX1SA–15 ADD EXHB, and EX1U15 ADD EXHB exhibits. To implement the change, EDGAR Release 20.4 removes the following exhibits:

- ''EX1A–15 ADD EXHB'' from DOS, DOS/A, 1–A, 1–A/A, and 1–A POS form types;
- ''EX1K–15 ADD EXHB'' from 1–K and 1–K/A form types;
- ''EX1SA–15 ADD EXHB'' from 1–SA and 1–SA/A form types; and
- ''EX1U–15 ADD EXHB'' from 1–U and 1–U/A form types.

See Appendix E (Automated Conformance Rules for EDGAR Data Fields) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

Finally, Volume II of the EDGAR Filer Manual has been revised to update contact information for certain divisions and offices. See Chapter 2 (Quick Guide to EDGAR Filing) of the EDGAR Filer Manual, Volume II: ''EDGAR Filing.''

V. Amendments to Rule 301, Regulation S–T

Along with the adoption of the updated Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* The EDGAR Filer Manual is also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m.

VI. Administrative Law Matters

Because the Filer Manual and rule amendments relate solely to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[26] It follows that the amendments do not require analysis under requirements of the Regulatory Flexibility Act[27] or a report to Congress under the Small Business Regulatory Fairness Act.[28]

The effective date for the updated Filer Manual and the related rules is February 3, 2021. In accordance with the APA,[29] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. For the revisions to Volume I of the Filer Manual, the changes that we are adopting today do not impose new burdens. The Volume I revisions retain the procedural requirements for making electronic submissions on EDGAR. The revisions remove unnecessary and outdated content from the Filer Manual and relocate elementary instructions and explanations to a web page on the Commission's website. Additionally, the Volume I revisions clarify the message in the Filer Manual concerning the consequences of making false statements or omissions of fact in EDGAR submissions, and inform filers of the Commission's authority regarding submissions on EDGAR. The Volume I revisions and related rule amendments generally relieve restrictions by incorporating the acceptance of electronic notarizations and remote online notarizations, which include electronic signatures, in addition to manual signatures and manual notarizations, to support requests for EDGAR access. For the revisions to Volume II of the Filer Manual, the Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Volume II of the Filer Manual with the related system upgrades. We therefore believe that the advance publication of the updated Filer Manual and the related rules prior to the effective date is unnecessary.

VII. Proposed Collection and Comment Request for Form ID

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Commission is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ID (OMB Control No. 3235–0328) must be completed and filed with the Commission by all individuals, companies, and other organizations who seek access to file electronically on the Commission's primary electronic filing system, EDGAR. Those seeking access to file on EDGAR typically include those who are required to make certain disclosures pursuant to the federal securities laws. The information provided on Form ID is an essential part of the security of EDGAR. Form ID is a not a public document because it is used solely for the purpose of screening applicants and granting access to EDGAR. Form ID must be submitted whenever an applicant seeks an EDGAR identification number and access codes to file on EDGAR. The Commission may consider enhancing the EDGAR access process to require filers that already have EDGAR identification numbers but do not have EDGAR access codes to submit a Form ID to obtain access codes to file on EDGAR. If these enhancements become effective, we estimate that approximately 48,493 filers will file Form ID annually and that it will take approximately 0.15 hours per response to prepare for a total of 7,274 annual burden hours. The estimate includes the number of filers without identification numbers and filers with identification numbers that seek to obtain access codes for purposes of submitting electronic filings on EDGAR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (i) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden imposed by the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

VIII. Statutory Basis

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[30] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[31] Section 319 of the Trust Indenture Act of 1939,[32] and Sections 8, 30, 31, and 38

[26] 5 U.S.C. 553(b)(A).

[27] 5 U.S.C. 601–612.

[28] 5 U.S.C. 804(3)(C).

[29] 5 U.S.C. 553(d)(3).

[30] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[31] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78o–4, 78w, and 78*ll.*

[32] 15 U.S.C. 77sss.

of the Investment Company Act of 1940.[33]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 232.10 by revising paragraph (b)(2) and adding paragraph (c) to read as follows:

§ 232.10 Application of part 232.

* * * * *

(b) * * *

(2) File, by uploading as a Portable Document Format (PDF) attachment to the Form ID filing, a notarized document, signed by the applicant, that includes the information required to be included in the Form ID filing and confirms the authenticity of the Form ID filing.

(c) The requirements of § 232.302 (Rule 302) do not apply to the notarized document required by paragraph (b)(2) of this section.

* * * * *

■ 3. Amend § 232.12 by revising paragraph (c) to read as follows:

§ 232.12 Business hours of the Commission.

* * * * *

(c) *Submissions by direct transmission.* Electronic filings and other documents may be submitted to the Commission each day, except Saturdays, Sundays, and Federal holidays, from 6 a.m. to 10 p.m., Eastern Time.

■ 4. Revise § 232.301 to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 36 (December 2020). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 56 (December 2020). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* The EDGAR Filer Manual is also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. You can also inspect the document 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.*

By the Commission.

Dated: December 11, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–00381 Filed 2–2–21; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0630]

RIN 1625–AA00

Safety Zone; Bahia de Ponce, Ponce, PR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for certain waters of Bahia de Ponce, Ponce, Puerto Rico. This action is necessary to provide for the safety of life on these navigable waters during ship-to-ship liquefied gas transfer operations between liquefied gas carriers. This rule will prohibit persons and vessels from being in the safety zone when activated unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: This rule is effective March 5, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0630 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 Lieutenant Natallia Lopez, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787–729–2380, email *ssjwwm@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
LG Liquefied Gas
LNG Liquefied Natural Gas
NPRM Notice of proposed rulemaking
PR Puerto Rico
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 20, 2020, New Fortress Energy requested to begin conducting ship-to-ship liquefied natural gas (LNG) transfer operations in a location approximately three nautical miles south of Ponce, Puerto Rico (PR). Coast Guard Sector San Juan engaged with local stakeholders and determined the proposed location could accommodate regular anchoring and ship-to-ship liquefied gas (LG) transfer operations between LG carriers. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with ship-to-ship LG transfer operations between LG carriers would be a safety concern for anyone within 100-yards of the location of the transfer operations. In response, on December 1, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Bahia de Ponce, Ponce, PR'' (85 FR 77093). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 31, 2020 we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with transfer operations between LG carriers would be a safety concern for anyone within 100-yards of the location of the transfer operations. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on the NPRM that published December 1, 2020. There are two changes in the regulatory text of this rule from the proposed rule in the NPRM. In § 165.788(a), under ''*Regulated area*'' the text stating, ''The waters around liquefied gas carriers conducting ship-to-ship liquefied natural gas transfer operations,'' is changed to, ''The waters around liquefied gas carriers conducting ship-to-ship liquefied gas transfer operations,'' removing the word ''natural.'' § 165.788)(b)(4), under ''*Regulations,*'' the phrase ''liquefied natural gas'' is also changed to ''liquefied gas.''

This rule establishes a permanent safety zone in certain waters of Bahia de Ponce, Ponce, PR where New Fortress Energy will be conducting ship-to-ship LNG transfer operations. These operations will be ongoing for the forseeable future. Accordingly, LG transfer operations will be held at various times on the waters of Bahia de Ponce, Ponce, PR.

This rule establishes a 100-yard safety zone in a location approximately three nautical miles south of Ponce, PR, while LG transfer operations are being conducted. No vessel or person will be permitted to enter the safety zone when activated without obtaining permission from the COTP or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the permanent safety zone by contacting the Captain of the Port San Juan by VHF–FM radio on Channels 16 and 22A, by calling Sector San Juan Command Center at (787) 289–2041, or via email to *ssjcc@uscg.mil.* If authorization to enter, transit through, or remain in the zones during transfer operations at any time is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 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).

This regulatory action determination is based on the size, location, duration and restrictions of the safety zone. The safety zone required for these operations is 100 yards, making the safety zone limited in size. The safety zone is limited to a location approximately three nautical miles south of Ponce, PR, making the zone limited in location. Additionally, the safety zone will be enforced only while LG transfer operations are being conducted, making it limited in duration. Vessels will be permitted to enter the safety zone when ship-to-ship transfer operations are not being conducted, limiting the restrictions associated with the safety 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone during ship-to-ship liquefied transfer operations lasting approximately 24 hours that would prohibit entry within 100 yards of the location of the transfer operations. It is categorically excluded from further review under paragraph L60(a) 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 § 165.788 to read as follows:

§ 165.788 Safety Zone; Bahia de San Juan, Ponce, Puerto Rico.

(a) *Regulated area.* A safety zone is established in the following area:

The waters around liquefied gas carriers conducting ship-to-ship liquefied gas transfer operations in an area 100-yards around each vessel in the approximate position 17°54′20″ N, 066°35′6″ W. All coordinates are North American Datum 1983.

(b) *Regulations.* (1) No person or vessel may enter, transit or remain in the safety zone unless authorized by the Captain of the Port, San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. Those in the safety zone must comply with all lawful orders or directions given to them by the Captain of the Port or the designated Coast Guard commissioned, warrant, or petty officer.

(2) Vessels encountering emergencies, which require transit through the safety zone, should contact the Coast Guard patrol craft or Duty Officer on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(3) The Captain of the Port and the Duty Officer at Sector San Juan, Puerto Rico, can be contacted at telephone number 787–289–2041. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF–FM channels 16 and 22A.

(4) Coast Guard Sector San Juan will, when necessary and practicable, notify the maritime community of periods during which the safety zones will be in effect by providing advance notice of scheduled ship-to-ship liquefied gas transfer operations of liquefied gas carriers via a Marine Broadcast Notice to Mariners.

(5) All persons and vessels must comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: January 25, 2021.

G.H. Magee,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2021–02104 Filed 2–2–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 36 and 668

RIN 1801–AA21

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. This adjustment is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act). These final regulations provide the 2021 annual inflation adjustments being made to the penalty amounts in the Department's final regulations published in the **Federal Register** on January 14, 2020 (2020 final rule).

DATES: These regulations are effective February 3, 2021. The adjusted CMPs established by these regulations are applicable only to civil penalties assessed after February 3, 2021 whose associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Levon Schlichter, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue SW, Room 6E235, Washington, DC 20202–2241. Telephone: (202) 453–6387. Email: *levon.schlichter@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

On request to the contact person listed in this section, individuals with disabilities can obtain this document 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.

SUPPLEMENTARY INFORMATION:

Background

A CMP is defined in the Inflation Adjustment Act (28 U.S.C. 2461 note) as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The Inflation Adjustment Act provides for the regular evaluation of CMPs to ensure that they continue to maintain their deterrent value. The Inflation Adjustment Act required that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every four years thereafter. The Department published its most recent cost adjustment to its CMPs in the **Federal Register** on January 14, 2020 (85 FR 2033), and those adjustments became effective on the date of publication.

The 2015 Act (section 701 of Pub. L. 114–74) amended the Inflation Adjustment Act to improve the effectiveness of CMPs and to maintain their deterrent effect.

The 2015 Act requires agencies to: (1) Adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation. Catch-up adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty was last adjusted by a statute other than the Inflation Adjustment Act, and the October 2015 CPI–U. Annual inflation adjustments are based on the percentage change between the October CPI–U preceding the date of each statutory adjustment, and the prior year's October CPI–U.[1] The Department published an IFR with the initial ''catch-up'' penalty adjustment amounts on August 1, 2016 (81 FR 50321).

In these final regulations, based on the CPI–U for the month of October 2020, not seasonally adjusted, we are annually adjusting each CMP amount by a multiplier for 2021 of 1.01182, as directed by the Office of Management and Budget (OMB) Memorandum No. M–21–10 issued on December 23, 2020.

The Department's Civil Monetary Penalties

The following analysis calculates new CMPs for penalty statutes in the order in which they appear in 34 CFR 36.2. The penalty amounts are being adjusted up based on the multiplier of 1.01182 provided in OMB Memorandum No. M–21–10.

Statute: 20 U.S.C. 1015(c)(5).

Current Regulations: The CMP for 20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965, as amended (HEA)), as last set out in statute in 1998 (Pub. L. 105–244, title I, section 101(a), October 7, 1998, 112 Stat. 1602), is a fine of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics. In the 2020 final rule, we increased this amount to $39,229.

New Regulations: The new penalty for this section is $39,693.

Reason: Using the multiplier of 1.01182 from OMB Memorandum No. M–21–10, the new penalty is calculated as follows: $39,229 × 1.01182 = $39,692.69, which makes the adjusted penalty $39,693, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1022d(a)(3).

Current Regulations: The CMP for 20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA), as last set out in statute in 2008 (Pub. L. 110–315, title II, section 201(2), August 14, 2008, 122 Stat. 3147), is a fine of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs. In the 2020 final rule, we increased this amount to $32,676.

New Regulations: The new penalty for this section is $33,062.

Reason: Using the multiplier of 1.01182 from OMB Memorandum No. M–21–10, the new penalty is calculated as follows: $$32,676 × 1.01182 = $33,062.23, which makes the adjusted penalty $33,062, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1082(g).

Current Regulations: The CMP for 20 U.S.C. 1082(g) (Section 432(g) of the HEA), as last set out in statute in 1986 (Pub. L. 99–498, title IV, § 402(a), October 17, 1986, 100 Stat. 1401), is a fine of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program. In the 2020 final rule, we increased this amount to $58,328.

New Regulations: The new penalty for this section is $59,017.

Reason: Using the multiplier of 1.01182 from OMB Memorandum No. M–21–10, the new penalty is calculated as follows: $58,328 × 1.01182 = $59,017.44, which makes the adjusted penalty $59,017, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1094(c)(3)(B).

Current Regulations: The CMP for 20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA), as set out in statute in 1986 (Pub. L. 99–498, title IV, § 407(a), October 17, 1986, 100 Stat. 1488), is a fine of up to $25,000 for an IHE's violation of Title IV of the HEA or its implementing regulations. Title IV authorizes various programs of student financial assistance. In the 2020 final rule, we increased this amount to $58,328.

New Regulations: The new penalty for this section is $59,017.

Reason: Using the multiplier of 1.01182 from OMB Memorandum No. M–21–10, the new penalty is calculated as follows: $58,328 × 1.01182 = $59,017.44, which makes the adjusted penalty $59,017, when rounded to the nearest dollar.

Statute: 20 U.S.C. 1228c(c)(2)(E).

Current Regulations: The CMP for 20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act), as set out in statute in 1994 (Pub. L. 103–382, title II, § 238, October 20, 1994, 108 Stat. 3918), is a fine of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents. In the 2020 final rule, we increased this amount to $1,722.

New Regulations: The new penalty for this section is $1,742.

Reason: Using the multiplier of 1.01182 from OMB Memorandum No. M–21–10, the new penalty is calculated as follows: $1,722 × 1.01182 = $1,742.35, which makes the adjusted penalty $1,742, when rounded to the nearest dollar.

Statute: 31 U.S.C. 1352(c)(1) and (c)(2)(A).

Current Regulations: The CMPs for 31 U.S.C. 1352(c)(1) and (c)(2)(A), as set out in statute in 1989 (Pub. L. 101–121, title III, § 319(a)(1), October 23, 1989, 103 Stat. 750), are a fine of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts. In the 2020 final rule, we increased these amounts to $20,489 to $204,892.

New Regulations: The new penalties for these sections are $20,731 to $207,314.

Reason: Using the multiplier of 1.01182 from OMB Memorandum No. M–21–10, the new minimum penalty is calculated as follows: $20,489 × 1.01182 = $20,731.18, which makes the adjusted penalty $20,731, when rounded to the nearest dollar. The new maximum penalty is calculated as follows: $204,892 × 1.01182 = $207,313.82, which makes the adjusted penalty $207,314, when rounded to the nearest dollar.

Statute: 31 U.S.C. 3802(a)(1) and (a)(2).

Current Regulations: The CMPs for 31 U.S.C. 3802(a)(1) and (a)(2), as set out in statute in 1986 (Pub. L. 99–509, title VI,

[1] If a statute that created a penalty is amended to change the penalty amount, the Department does not adjust the penalty in the year following the adjustment.

§ 6103(a), Oct. 21, 1986, 100 Stat. 1937), are a fine of up to $5,000 for false claims and statements made to the Government. In the 2020 final rule, we increased this amount to $11,665.

New Regulations: The new penalty for this section is $11,803.

Reason: Using the multiplier of 1.01182 from OMB Memorandum No. M–21–10, the new penalty is calculated as follows: $\$11,665 \times 1.01182 = \$11,802.88$, which makes the adjusted penalty $11,803, when rounded to the nearest dollar.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as ''economically significant'' regulations);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

We have determined that these final regulations: (1) Exclusively implement the annual adjustment; (2) are consistent with OMB Memorandum No. M–21–10; and (3) have an annual impact of less than $100 million. Therefore, based on OMB Memorandum No. M–21–10, this is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations as required by statute and in accordance with OMB Memorandum No. M–21–10. The Secretary has no discretion to consider alternative approaches as delineated in the Executive order. Based on this analysis and the reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For fiscal year 2021, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. These final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2021 penalty amounts notwithstanding the requirements of 5 U.S.C. 553. Therefore, the requirements of 5 U.S.C. 553 for notice and comment and delaying the effective date of a final rule do not apply here.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 601(2), the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply to this rulemaking because section 4(b)(2) of the 2015 Act (28 U.S.C. 2461 note) provides that the Secretary can adjust these 2021 penalty amounts without publishing a general notice of proposed rulemaking.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 36

Claims, Fraud, Penalties.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Phil Rosenfelt,

Acting Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 36 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; 28 U.S.C. 2461 note, as amended by section 701 of Pub. Law 114–74, unless otherwise noted.

■ 2. Section 36.2 is amended by revising Table 1 to read as follows:

§ 36.236 Penalty adjustment.

* * * * *

TABLE 1 TO § 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1015(c)(5) (Section 131(c)(5) of the Higher Education Act of 1965 (HEA)).	Provides for a fine, as set by Congress in 1998, of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics.	$39,693
20 U.S.C. 1022d(a)(3) (Section 205(a)(3) of the HEA).	Provides for a fine, as set by Congress in 2008, of up to $27,500 for failure by an IHE to provide information to the State and the public regarding its teacher-preparation programs.	33,062
20 U.S.C. 1082(g) (Section 432(g) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for violations by lenders and guaranty agencies of Title IV of the HEA, which authorizes the Federal Family Education Loan Program.	59,017
20 U.S.C. 1094(c)(3)(B) (Section 487(c)(3)(B) of the HEA).	Provides for a civil penalty, as set by Congress in 1986, of up to $25,000 for an IHE's violation of Title IV of the HEA, which authorizes various programs of student financial assistance.	59,017
20 U.S.C. 1228c(c)(2)(E) (Section 429 of the General Education Provisions Act).	Provides for a civil penalty, as set by Congress in 1994, of up to $1,000 for an educational organization's failure to disclose certain information to minor students and their parents.	1,742
31 U.S.C. 1352(c)(1) and (c)(2)(A)	Provides for a civil penalty, as set by Congress in 1989, of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that improperly lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	20,731 to 207,314
31 U.S.C. 3802(a)(1) and (a)(2)	Provides for a civil penalty, as set by Congress in 1986, of up to $5,000 for false claims and statements made to the Government.	11,803

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The authority citation for part 668 continues to read in part as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

* * * * *

§ 668.84 Amended]

■ 4. In § 668.84 amend paragraph (a)(1) introductory text by removing the number "$58,328" and adding, in its place, the number "$59,017".

[FR Doc. 2021–02231 Filed 2–2–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140819687–5583–02]

RTID 0648–XA842

Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region; 2020–2021 Commercial Closure for Spanish Mackerel in the Atlantic Southern Zone

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the Atlantic southern zone for commercial Spanish mackerel in or from the Atlantic exclusive economic zone. NMFS has determined that the commercial quota for Spanish mackerel in the Atlantic southern zone will be reached by February 3, 2021. Therefore, NMFS closes the Atlantic southern zone to commercial harvest of Spanish mackerel on February 3, 2021. This closure is necessary to protect the Spanish mackerel resource in the Atlantic.

DATES: This temporary rule is effective from 6 a.m. eastern time on February 3, 2021, until 12:01 a.m. eastern time on March 1, 2021.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish in the Atlantic includes king mackerel, Spanish mackerel, and cobia on the east coast of Florida, and is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights described for the Atlantic migratory group of Spanish mackerel (Atlantic Spanish mackerel) apply as either round or gutted weight.

For management purposes, the commercial sector of Atlantic Spanish mackerel is divided into northern and southern zones. The southern zone consists of Federal waters off South Carolina, Georgia, and the east coast of Florida. The southern zone boundaries extend from the border of North Carolina and South Carolina, which is a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N latitude and 78°32′32.6″ W longitude to the intersection point with the outward boundary of the U.S. exclusive economic zone, to the border of Miami-Dade and Monroe Counties in Florida at 25°20′24″ N latitude.

The southern zone commercial quota for Atlantic Spanish mackerel is 2,667,330 lb (1,209,881 kg). Regulations at 50 CFR 622.388(d)(1)(i) require NMFS to close the commercial sector for Atlantic Spanish mackerel in the southern zone when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for Atlantic Spanish mackerel in the southern zone will be reached by February 3, 2021. Accordingly, the commercial sector for Atlantic Spanish mackerel in the southern zone is closed effective at 6 a.m. eastern time on February 3, 2021, through February 28, 2021, the end of the current fishing year.

During the commercial closure, a person on a vessel that has been issued a valid Federal permit to harvest Atlantic Spanish mackerel may continue to retain this species in the southern zone under the recreational bag and possession limits specified in 50 CFR 622.382(a)(1)(iii) and (a)(2), as long as the recreational sector for Atlantic Spanish mackerel is open (50 CFR 622.384(e)(1)).

Also during the closure, Atlantic Spanish mackerel from the southern zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to Atlantic Spanish mackerel from the southern zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(2)).

Commercial harvest of Atlantic Spanish mackerel in the southern zone for the 2021–2022 fishing year begins on March 1, 2021.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.388(d)(1)(i), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, 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 is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the commercial closure for Atlantic Spanish mackerel have already been subject to notice and public comment, and all that remains is to notify the public of the commercial closure. Prior notice and opportunity for public comment on this action is contrary to the public interest because of the need to immediately implement the commercial closure to protect the Atlantic Spanish mackerel resource. The capacity of the fishing fleet allows for rapid harvest of the commercial quota, and any delay in the commercial closure could result in the commercial quota being exceeded. Prior notice and opportunity for public comment would require time and would potentially result in a harvest that exceeds the commercial quota.

For the aforementioned reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of this action.

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

Dated: January 29, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–02235 Filed 1–29–21; 4:15 pm]

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Federal Register

Vol. 86, No. 21

Wednesday, February 3, 2021

Proposed Rules

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 Part 7

[Docket No. OCC–2020–0045]

RIN 1557–AF07

National Bank and Federal Savings Association Premises

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

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 bank and Federal savings association premises.

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

ADDRESSES: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title ''National Bank and Federal Savings Association Premises'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov*. Enter ''Docket ID OCC–2020–0045'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Mail:* 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–2020–0045'' in your comment.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0045'' 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, 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:* Go to *www.regulations.gov*. Enter ''Docket ID OCC–2020–0045'' 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.

FOR FURTHER INFORMATION CONTACT: Matthew Tynan, Counsel; Sarah Turney, Counsel; Henry Barkhausen, 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

The Office of the Comptroller of the Currency (OCC) is issuing a notice of proposed rulemaking to amend its regulations on national bank or Federal savings association ownership of real property. The OCC also proposes to consolidate 12 CFR 7.3001 on sharing national bank or Federal savings association space and employees with the rule covering ownership of property. The OCC proposes to continue to cover the national bank and Federal savings association charters under the same regulation, but, because different statutory regimes cover each charter, the OCC seeks comment on whether to apply different requirements to national banks and Federal savings associations.

II. Background

The OCC periodically reviews its regulations to eliminate outdated or otherwise unnecessary regulatory provisions and, where possible, to clarify or revise requirements imposed on national banks and Federal savings associations. As part of the periodic review that resulted in recent amendments to 12 CFR part 7, which take effect on April 1, 2021, the OCC determined that it would propose revisions to the rules governing national bank and Federal savings association premises currently codified at 12 CFR 7.1000, which the recent amendments to 12 CFR part 7 redesignated as to 12 CFR 7.1024.[1] The OCC determined that the regulation may need significant revision and that such revisions may involve significant policy considerations. To consider the matter more fully and ensure the greatest benefit from public comment, the OCC chose to propose revisions to redesignated 12 CFR 7.1024 separately from the revisions to 12 CFR part 7 finalized in 2020.[2] Because of the redesignation of 12 CFR 7.1000 as 12 CFR 7.1024, this proposed rule refers to 12 CFR 7.1024.[3]

National bank ownership of real estate is governed by 12 U.S.C. 29, an original component of the National Bank Act. Twelve U.S.C. 29 generally prohibits national banks from purchasing, holding, or conveying real estate except for a list of four exclusive exceptions. The first such purpose covers the authority of a national bank to hold real property ''[s]uch as shall be necessary for its accommodation in the transaction of its business.''[4] As stated by the

[1] 85 FR 40794 (July 7, 2020). 12 CFR 7.1024 was previously codified at 12 CFR 7.1000.

[2] 85 FR 83686 (December 22, 2020).

[3] Because the redesignation of 12 CFR 7.1000 as 12 CFR 7.1024 takes effect on April 1, 2021, the regulatory text of this proposed rule must reflect this as an addition rather than an amendment. The final rule will reflect the change as an amendment.

[4] The other three purposes all relate to the national bank authority to own property taken for

Continued

Supreme Court, this statute was designed to promote the safety and soundness of national banks by discouraging real estate speculation, and was also designed to protect the national economy and consumers by preventing banks from holding masses of property for their own account.[5] Consistent with the statutory framework, a national bank investing in property should be doing so ''in good faith, solely with a view of obtaining an eligible location'' and not for the purpose of speculating or investing in real estate as a landlord.[6]

Federal savings association ownership of premises is governed by the Home Owners Loan Act (HOLA). Although the HOLA does not specifically address a Federal savings association's investment in banking premises and there is no prohibition in the HOLA similar to 12 U.S.C. 29, historically, the Federal Home Loan Bank Board (FHLBB), the Office of Thrift Supervision (OTS), and the OCC have interpreted the HOLA to permit Federal savings associations to hold real estate only for their offices and related facilities with permission to rent or sell excess space in their offices and facilities and the OCC has issued regulations governing a Federal savings association's investment in banking premises pursuant to general supervisory and rulemaking authority under the HOLA.[7] After Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act[8] transferred to the OCC all functions of the former OTS and the Director of the OTS relating to Federal savings associations, the OCC began reviewing its rules governing national banks and Federal savings associations to determine which rules were appropriate to integrate into a single set of rules for both national banks and savings associations.[9] After this review, the OCC did not find substantive differences between the then-banking premises rules and related OTS guidance governing national banks and Federal savings associations and determined that, as a supervisory matter, it was appropriate to apply the rule governing national banks to both national banks and Federal savings associations.[10]

The OCC implemented 12 CFR 7.1024 to cover national bank and Federal savings association ownership of real estate for their own use. However, 12 CFR 7.1024 does not provide a full set of standards implementing the requirements of 12 U.S.C. 29 and the HOLA regarding national bank and Federal savings association premises. Rather, 12 CFR 7.1024 is an interpretive rule that codifies specific OCC interpretations of 12 U.S.C. 29. Thus, although the rule contains a list of types of real estate that the OCC has found permissible for national bank and Federal savings association ownership, that list is not exhaustive. Moreover, significant standards relating to the permissibility of real estate ownership, such as the minimum percentage of bank occupancy required for a building to qualify as premises, are not addressed anywhere in OCC regulation.

Instead, the OCC has long deferred to court cases and published OCC precedent to cover the field of requirements for national bank and Federal savings association ownership of premises. The OCC historically chose not to define specific limitations for standards, such as percentages of occupancy,[11] instead relying on principles drawn from precedent to preserve a flexible approach to new national bank proposals while ensuring those principles continue to reflect the purposes behind 12 U.S.C. 29.[12] The OTS similarly did not set percentages of occupancy within its premises regulation for Federal savings associations.[13]

Although this precedent-based approach provides flexibility, it comes with several limitations. First, since precedent is necessarily responsive to presented facts, reliance on precedent means there is no clear rule to give notice to banks or the public of what forms of real estate ownership are permissible for a bank. Published OCC precedent by its nature typically describes fact patterns found to be permissible. Therefore, reliance on precedent alone makes it difficult for the industry and the public to understand what set of facts would be impermissible. Given the time and effort often required to plan an investment in premises, delays and uncertainty caused by unclear legal standards can be problematic.

Second, national bank premises precedent was largely formed at a time when the banking industry was different than the one in existence today. Many of the most important cases decided on premises occurred at a time when most banks operated entirely out of a single headquarters. The principles drawn from those cases remain relevant in the present day, but the reality of a modern large bank is very different than a bank that existed prior to interstate branching. Bank premises rules in the present day must apply to both

debts previously contracted and other such means of securing debts. The proposed rule would not affect the ability of national banks to rely on these other purposes in 12 U.S.C. 29. The proposed rule would only interpret and implement the meaning of the first purpose (''Such as shall be necessary for its accommodation in the transaction of its business'').

[5] *Union National Bank* v. *Matthews,* 98 U.S. 621, 626 (1878) (''to keep the capital of the banks flowing in the daily channels of commerce; to deter them from embarking in hazardous real estate speculations; and to prevent the accumulation of large masses of such property in the banks' hands, to be held, as it were, in mortmain'').

[6] *Brown* v. *Schleier,* 118 F. 981, 984 (8th Cir. 1902), *aff'd* 194 U.S. 18 (1904).

[7] 80 FR 28346, 28377 (May 18, 2015).

[8] Public Law 111–203, 124 Stat. 1376 (2010).

[9] *See* footnote 7.

[10] *Id.*

[11] OCC Interpretive Letter No. 1053 (Jan. 31, 2006) (''Neither the OCC nor the courts have established a single occupancy percentage test . . .'').

[12] Outstanding precedent includes OCC Interpretive Letter No. 1072 (Sept. 15, 2006) (permitting a bank to lease out a portion of its existing premises to retail businesses in arrangements under which approximately 50 percent of the premises would be used by the bank for its banking business); OCC Interpretive Letter No. 1053 (Jan. 31, 2006) (describing OCC analysis of permissibility of premises in OCC Interpretive Letter No. 1045 and 1044); OCC Interpretive Letter No. 1045 (Dec. 5, 2005) (permitting a national bank to establish a hotel on its premises, of which the bank intended to use more than 50 percent of the occupancy for out-of-area bank employees, members of the bank's board of directors, and selected vendors, shareholders, customers, and other visitors on bank-related business); OCC Interpretive Letter No. 1044 (Dec. 5, 2005) (permitting a national bank to establish a mixed-use office, hotel, and residences facility on its premises, in which the bank would use less than 50 percent of the premises for banking purposes); OCC Interpretive Letter No. 1043 (July 8, 1993) (permitting a national bank to lease to third parties a bank condominium when it is not being used for bank purposes); OCC Interpretive Letter No. 1042 (Jan. 21, 1993) (permitting a bank to retain a condominium used only for bank purposes); OCC Interpretive Letter No. 1034 (April 1, 2005) (permitting a national bank to construct new facilities on existing premises real estate, use less than 50 percent of the premises for bank purposes, and lease unused space as excess bank premises); Conditional Approval No. 298 (Dec. 15, 1998) (permitting a bank to use less than 50 percent of office premises for its banking business); Interpretive Letter No. 758 (April 5, 1996) (permitting a national bank to lease out a portion of its real estate held as premises for employee recreation purposes to a third party to remove a hill and mine granite deposits). As discussed below, this proposed rule would supersede existing precedent to the extent it is inconsistent with the proposed rule. However, the proposed rule would not necessarily supersede precedent that is consistent with the requirements of the proposed rule or precedent that addresses issues not covered by the proposed rule. The OCC requests comment on whether and how outstanding precedent should be affected by the proposed rule.

[13] Former 12 CFR 560.37. In 2011, the OCC republished OTS regulations set out in Chapter V of Title 12, including 12 CFR 560.37, with OCC part numbers changing the ''5'' to a ''1''. 12 CFR 560.37 became 12 CFR 160.37. 76 FR 48950 (August 9, 2011). 12 CFR 160.37 was subsequently removed when Federal savings associations were integrated into the national bank rule. Prior OTS guidance provided that a building would be a Federal savings association's premises if the association used 25 percent or more of the building. *OTS Handbook,* Section 252, Fixed Assets, April 1999, p.31 (rescinded).

community banks, some operating out of a single building or few buildings, and large banks with tens of thousands of employees and operations in all fifty states.

Finally, commercial real estate itself has changed greatly in the past several decades in ways that are difficult to square with premises precedent. The majority of OCC and OTS premises precedent concerns either branches or standalone office space, as those were the typical premises arrangements for banking operations in the 20th century. Recent years have seen the growth of mixed-use developments combining office space with retail space, residential space, and other uses not typically found in a traditional office building. Some industries have moved towards a comprehensive campus arrangement providing employees with amenities and working arrangements previously not present in an office environment. Finally, with the development of robust teleconferencing and the arrival of the COVID–19 pandemic, many companies are moving towards offsite, shared, or virtual work spaces. It is increasingly difficult for national banks and Federal savings associations to rely on precedent focusing on traditional office arrangements to determine whether and to what extent they may own mixed-use developments, install amenities to compete with those offered by other industries (including technology companies), or make use of alternative work arrangements.

For these reasons, the OCC proposes these revisions to 12 CFR 7.1024 to codify and clarify a transparent and consistent set of principles for national bank and Federal savings association premises. The OCC intends these regulations to meet the needs of modern national banks and Federal savings associations while ensuring consistent application of and adherence to the limitations of 12 U.S.C. 29 and the HOLA.

Question One: Although current OCC regulations and the proposal cover both the national bank and Federal savings association charters in one section, there are differences in the statutory regimes covering each charter. Would it be preferable to apply different requirements to Federal savings association premises? Specifically, should the proposed rule apply only to national banks? If so, what requirements should apply to Federal savings associations? Should the OCC continue to apply the current requirements to Federal savings associations even if it adopts the proposed rule with respect to national banks? Should the OCC adopt a requirement for Federal savings associations that is similar to or identical to the requirement in effect before the integration of national bank and Federal savings association requirements?[14] *Also, should the proposed rule apply to federal branches and agencies of foreign banks regulated by the OCC? If so, should modified requirements be applied to such branches and agencies?*

III. The Proposed Rule

The OCC is proposing to revise § 7.1024 to provide general standards the OCC will use in determining whether the acquisition and holding of real estate is necessary for the transaction of a national bank's or Federal savings association's business. Revisions include implementing an occupancy test and excess capacity standards that would allow national banks and Federal savings associations to ascertain better whether an acquisition or holding of real estate is permissible under 12 U.S.C. 29 or the HOLA. The OCC has determined that national banks and the public would benefit from clear standards related to the requirements and expectations for real estate to be considered necessary for the transaction of a national bank's or Federal savings association's business as required by 12 U.S.C. 29 or the HOLA. Current § 7.1024 and various legal interpretations provided examples of permissible holdings, but the OCC has determined that, for the reasons articulated above, these examples do not provide general principles national banks could apply to new acquisitions. Without clear principles, there is the potential for inconsistent application of 12 U.S.C. 29, the HOLA, and 12 CFR 7.1024. The proposed revisions are intended to provide for more consistent application of 12 U.S.C. 29, the HOLA, and 12 CFR 7.1024.

Definitions (§ 7.1024(a))

Proposed § 7.1024(a) provides certain definitions used in the proposed rule. Bank occupied office premises is defined in proposed § 7.1024(a)(1) as bank occupied premises containing offices where professional or clerical duties are performed.

Bank occupied premises is defined in proposed § 7.1024(a)(2) as real estate acquired and held in good faith in which more than 50 percent of each building or severable piece of land is used by bank persons, including facilities that may be operated by third parties to provide amenities and services to bank persons or otherwise facilitate bank business operations. This definition encompasses a variety of factual situations, including a bank's acquisition of a single premises building or a bank's development of a premises campus. As reflected in the above definition, in any factual situation the OCC would apply the 50 percent occupancy standard to each building or severable piece of land. In order for a building or severable piece of land to be considered bank occupied premises, more than 50 percent of the space must be used by, or for, bank persons to facilitate bank business operations. Space that facilitates bank business operations would include facilities operated by third parties to provide amenities and services to bank persons that facilitate bank business operations; examples of such facilities include an office gym, cafeteria, daycare, or printing center. In calculating the occupancy percentage, the national bank or Federal savings association would look at each building or severable piece of land using the amount of space that is used by or for bank persons as the numerator and the overall space of the building or severable piece of land as the denominator. As an example, a national bank or Federal savings association that acquires and holds a building in good faith and in which the national bank or Federal savings association uses 4,000 square feet of the 6,000 square foot building for a bank branch, bank offices, gym for bank persons' use, and cafeteria for bank persons' use, the occupancy percentage would be approximately 67 percent and the national bank or Federal savings association could rent the remaining 2,000 square feet of the building, for example as ground floor retail space, in order to avoid economic loss or waste in the real estate consistent with § 7.1024(c).

Question Two: The OCC requests comment on whether 50 percent is the appropriate percentage for bank occupied premises. Should the percentage be higher, such as 75 percent, or lower, such as 25 percent? The OCC requests comments on all possible percentage limitations and particularly the range of percentages between 25 and 75. Why should the

[14] 61 FR 66561, 66579 (Dec. 18, 1996) (''A federal savings association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the federal savings association's present needs or its reasonable future needs for office and related facilities. A federal savings association may not make an investment that would cause the outstanding book value of all such investments (including investments under § 559.4(e)(2) of this chapter) to exceed its total capital.'').

percentage be higher or lower than 50 percent?

Question Three: The OCC requests comment on whether ground floor retail space rented to a third party should be treated differently under the occupancy percentage calculation. For example, should ground floor retail space that is intended primarily for bank persons use be included in the numerator of the calculation even if third parties incidentally use the space? Should ''primarily'' be defined as more than 50 percent of use by bank persons? Or, should ground floor retail space that is not intended primarily for bank persons be excluded entirely from the occupancy percentage calculation as an incident of sound facilities management so that it would be included in neither the numerator nor the denominator? Or should retail space that is intended, but not primarily intended, for bank persons be excluded from the numerator but included in the denominator? Should other adjustments be made to the calculation? Should unused or less-used spaces (such as stairwells, lobbies, and maintenance areas) be excluded from the numerator, denominator, or both?

Question Four: How should land obtained by a national bank or Federal savings association as lessee be treated? The proposed rule would treat all land obtained by the bank through lease for use as premises as subject to the rule and its calculation requirements. Should certain types of leases (e.g., operating leases or capital leases) be treated differently or excluded from the calculation?

Bank persons is defined in proposed § 7.1024(a)(3) as a national bank's or Federal savings association's employees, contractors, consultants, vendors, and any other individuals who are engaged in the national bank's or Federal savings association's business.

Impermissible premises is defined in proposed § 7.1024(a)(4) as real estate that is not bank occupied premises or that otherwise does not conform with the requirements of this section. Impermissible premises is any property not expressly permitted under this section, including real estate in which the national bank or Federal savings association uses 50 percent or less of the building or severable piece of land for bank persons or the facilitation of bank business operations. Impermissible premises would also include real estate in which a national bank or Federal savings association occupies 50 percent or more but does not comply with the excess space and capacity provisions of proposed § 7.1024(c). Real estate held under the transition provision in proposed § 7.1024(g) would not be considered impermissible premises.

Shared space is defined in proposed § 7.1024(a)(5) as bank occupied office premises that a national bank or Federal savings association shares with a third party to enhance the national bank's or Federal savings association's business operations. The OCC is proposing to remove the shared space provisions from 12 CFR 7.3001 and instead include them in proposed § 7.1024(e) to eliminate confusion regarding the interaction of the shared space provisions with the permissibility provisions of 12 CFR 7.1024. These proposed provisions are substantively unchanged from the current rule.

Investments in Real Estate Necessary for the Transaction of Business (§ 7.1024(b))

Proposed § 7.1024(b) provides that a national bank or Federal savings association may acquire, hold, or convey real estate for use as bank occupied premises.[15] Under the proposed rule, bank occupied premises would be considered real estate necessary for the transaction of a national bank's or Federal savings association's business, and thus a national bank or Federal savings association would be permitted to acquire, hold, and convey real estate that is included within the definition of bank occupied premises.

Excess Space or Capacity (§ 7.1024(c))

Proposed § 7.1024(c) sets forth the principles of the excess capacity doctrine[16] recognizing national banks' and Federal savings associations' need to optimize the value of bank property by authorizing national banks and Federal savings associations to sell or lease excess space or capacity in that property.[17] Although national banks and Federal savings associations may sell or lease excess capacity or space in property, the property must have been legitimately acquired for banking purposes, meaning the national bank or Federal savings association must acquire or hold such property because of its suitability for use in banking operations or by bank persons and not as a means to invest the bank's funds in real property or to speculate in real estate.[18]

Proposed § 7.1024(c)(1) provides that a national bank or Federal savings association may, in order to optimize the use of bank occupied premises or avoid economic loss or waste, permit third parties to use excess space or capacity in real estate legitimately acquired or developed by the national bank or Federal savings association for its banking business. The proposal also provides that such excess space or capacity must have a nexus with the transaction of bank business or bank operations such that it is acquired or held to provide the national bank or Federal savings association with a business location rather than as an investment in real estate. A national bank or Federal savings association must be able to demonstrate a nexus between its ownership of the property and the transaction of its business or bank operations. One way to demonstrate such a nexus would be for the national bank or Federal savings association to show in its business plan how the property supports its business. Demonstrating that there is a nexus between the ownership of property and the transaction of its business allows the national bank or Federal savings association to demonstrate that such property was acquired or developed in good faith and not for a speculative purpose, consistent with statutory requirements. Although a national bank or Federal savings association may sell or lease excess space or capacity legitimately acquired or developed, a national bank or Federal savings association acquiring or developing

[15] 12 U.S.C. 29 provides that national banks may only ''purchase, hold, and convey real estate'' for four specific purposes. The OCC interprets the words ''purchase, hold, and convey'' to encompass all forms of real estate acquisition, ownership, and transfer. The proposed rule would use the words ''acquire, hold, or convey'' to make clear that all forms of real estate acquisition and ownership would be covered by the proposed rule. Depending on the circumstances, the words ''acquire, hold, or convey'' may include real estate obtained by a national bank or Federal savings association via lease.

[16] The excess capacity doctrine holds that a bank properly acquiring an asset to conduct its banking business is permitted, under its incidental powers, to make full economic use of the property if using the property solely for banking purposes would leave the property underutilized. *See* OCC Conditional Approval No. 361 (Mar. 3, 2000). In 2002, the OCC distilled this doctrine in a regulation that allowed national banks to sell excess electronic capacity, including data processing services. 12 CFR 7.5004. This regulation relied on the previous history of allowing the sale of excess real property. 67 FR 34992, 34995 (May 17, 2002). The current proposal for the treatment of excess capacity in the real estate context is consistent with the distillation set forth in the electronic capacity rule.

[17] See 12 U.S.C. 24 (Seventh) and 29; *Perth Amboy National Bank* v. *Brodsky,* 207 F. Supp. 785, 788 (S.D.N.Y. 1962) (''It is clear beyond cavil that the statute [12 U.S.C. 29] permits a national bank to lease or construct a building, in good faith, for banking purposes, even though it intends to occupy only a part thereof and to rent out a large part of the building to others.'').

[18] *Brown* v. *Schleier,* 118 F. 981, 984 (8th Cir. 1902). (''. . . provided, always, that it acts in good faith, solely with a view of obtaining an eligible location, and not with a view of investing its funds in real property or embarking them in speculations in real estate.'').

space in order to serve as a landlord to tenants using space unrelated to the transaction of its business or bank operations (for example, a grocery store or a branded hotel) would likely not meet this requirement as the national bank or Federal savings association would not merely be avoiding economic waste in acquiring or developing real estate for such purposes but likely actively investing in real estate for a speculative non-banking purpose. In the case of leasing space to tenants such as a grocery store or a branded hotel, the national bank or Federal savings association would likely derive significant revenue related to such activity and would need to demonstrate that the real estate was not acquired primarily for its lease income but rather because of its suitability for bank purposes or use by bank persons. A national bank or Federal savings association can only lease legitimate excess space or capacity, and if real estate is acquired or developed in a volume or manner that is not consistent with the bank's operations or business, for example as set forth in its business plan, such real estate was likely not legitimately acquired or developed, and thus would be impermissible.

Excess space is space in bank occupied premises that is not being used by bank persons or for bank operations. Excess capacity in bank occupied premises can be either temporal or space-based. An example of temporal excess capacity is a bank auditorium that is used after bank business hours by members of the local community. An example of space-based excess capacity is a call center in which the bank needs space for 100 employees during eight months of the year but only needs space for 80 employees during the remaining four months of the year. In both examples, the space can be used by non-bank persons as long as the space was legitimately acquired or developed by the bank for its operations or business as required by § 7.1024(c)(1).

Proposed § 7.1024(c)(2) discusses situations in which legitimate excess space or capacity may be used by third parties. Section § 7.1024(c)(2)(i) through (iv) have analogous provisions in the excess capacity provisions for electronic activities located in 12 CFR 7.5004. Section 7.1024(c)(2)(i) provides that excess space or capacity can be used by third parties to the extent that the real estate acquired is consistent with the real estate available in the market. For example, if a national bank or Federal savings association is located in an area in which strip malls are the predominant type of commercial real estate, then a national bank or Federal savings association may be able to acquire a strip mall if the national bank or Federal savings association would occupy greater than 50 percent of the space and lease out the remaining space. However, as the national bank or Federal savings association must have good faith and a non-speculative purpose in order for real estate to be legitimately acquired, a national bank or Federal savings association would need to analyze carefully whether this requirement would be met if many smaller strip malls than the one it acquired were available or if there were many free standing buildings more appropriately sized for bank purposes available in the market.

Section 7.1024(c)(2)(ii) provides that a national bank or Federal savings association may acquire and retain additional space or capacity, beyond its present needs, if it is reasonably necessary for planned future expansion or to meet the bank's future expected banking needs as long as the bank uses the additional space or capacity in the real estate acquired for future bank expansion within five years. A national bank or Federal savings association may acquire real estate intended to be used for future banking purposes and may permit third parties to use this excess space or capacity, but the national bank or Federal savings association must use this real estate for banking purposes within five years of acquisition. The OCC understands that it is prudent for a national bank or Federal savings association to plan for future expansion and use, so a national bank or Federal savings association may legitimately acquire and develop real estate intended for future use as long as that real estate is used by the national bank or Federal savings association within five years of its acquisition or development. If the property does not become bank occupied premises within five years, it will become Other Real Estate Owned (OREO) and, subject to 12 U.S.C. 29 for national banks and 12 CFR 34.82 for national banks and Federal savings associations, must be disposed of within five years of becoming OREO, unless the bank requests an extension of up to an additional five years.

Proposed § 7.1024(c)(2)(iii) provides that a national bank or Federal savings association may lease excess capacity resulting from a fluctuation caused by the bank's need to use the full capacity of a space during peak periods but not in other off-peak periods. This situation is similar to the example discussed above related to a call center which the bank uses all 100 available seats during eight months of the year but only used 80 during the other four months. The bank may allow third parties to use the excess 20 seats in its call center provided the capacity was legitimately acquired for bank operations and does not impede the safe and sound operation of the bank.

Proposed § 7.1024(c)(2)(iv) provides that a national bank or Federal savings association may lease excess capacity or space that is no longer needed due to a decline in the level of banking operations. In this situation, a bank acquired real estate for use in its banking operations and, based on a decline in bank activity or operation, no longer needs all of the space. The nexus between national bank or Federal savings association ownership of a building and its banking operations becomes clearer the closer the bank's occupancy approaches one hundred percent. As with excess capacity in data processing, the OCC presumes a certain percentage of use of the property to be permissible. The bank may allow third parties to use the space provided the bank still otherwise occupies more than 50 percent of the real estate as required by § 7.1024(a)(2).

Question Five: Should the OCC permit a national bank or Federal savings association to lease out more than 50 percent of its premises on a temporary basis, provided that the national bank brings its percentage of occupancy back to at least 50 percent by a certain time period?

Question Six: Should the OCC impose additional time-based limitations on a bank's ability to lease out excess space or capacity? For example, should a bank be permitted to lease out 50 percent of its space for a limited period (for example, five years) but be subject to a higher usage requirement (for example, 75 percent) on an ongoing basis?

Question Seven: Should certain uses be permissible but subject to a time-based limit?

Proposed § 7.1024(c)(2)(v) provides that a national bank or Federal savings association may permit third parties to use bank occupied premises after bank business hours.[19] For example, a bank may permit community members to use a bank auditorium or conference center after bank business hours. After hours

[19] National banks and Federal savings associations are often key anchors in a local community and can be called on to play an important role in life-cycle events, for example supplying the use of a conference room or the institution's board room for a funeral viewing or community celebration during business hours. Occasional use of facilities for such purpose is entirely consistent with the institution's role in the local community and is not inconsistent with section 29 or 1464 and this proposed rule.

use by third parties will not affect the bank occupied premises calculation.

The OCC recognizes that often national banks and Federal savings associations are asked or required by outside parties, such as a local government, to make commitments to allow third party or public use in order to acquire or hold real estate. When such commitments are requested or required, the national bank or Federal savings association should inform the appropriate OCC supervisory office of such requests and share such commitments and other relevant information with the appropriate OCC supervisory office.

Impermissible Premises (§ 7.1024(d))

Proposed § 7.1024(d) provides that a national bank or Federal savings association may not acquire or hold impermissible premises. Proposed § 7.1024(a)(4) defines impermissible premises as real estate that is not bank occupied premises or that otherwise does not conform with the requirements of this section. If the real estate acquisition or holding would not conform with the requirements of § 7.1024, then it would be impermissible.

Question Eight: Should the OCC include specific examples in § 7.1024(d) of impermissible premises? If so, what examples should be included? Should large retail operations, such as grocery stores, be specifically impermissible? Should commercial lodging (rental apartments, branded hotels) be specifically impermissible?

Question Nine: Courts have explained that, under 12 U.S.C. 29, national banks investing in property should be doing so ''in good faith, solely with a view of obtaining an eligible location'' and not for the purpose of speculating or investing in real estate as a landlord.[20] *Should the final rule retain the good faith requirement to ensure that national banks and Federal savings associations are only permitted to acquire additional real estate with the intention of using it as premises? Should the final rule make further clarification that national banks and Federal savings associations would not be permitted to obtain real estate with the intention of using part of the real estate for a non-premises purpose on an indefinite basis?*

[20] *Brown* v. *Schleier*, 118 F. 981, 984 (8th Cir. 1902), *aff'd* 194 U.S. 18 (1904).

Sharing National Bank or Federal Savings Association Space and Employees in Jointly Held Bank Occupied Premises (§ 7.1024(e))

Proposed § 7.1024(e) substantially imports current 12 CFR 7.3001 concerning the sharing of national bank or Federal savings association space and employees in jointly held bank occupied office premises covering situations where a bank and another business jointly hold and share the same space as opposed to a bank leasing a separate space within a building to a third party. Proposed § 7.1024(e) provides guidance on how to share offices and employees in a manner that protects customers and is consistent with safe and sound banking practices. The proposed rule would not alter or affect existing precedent applicable to 12 CFR 7.3001. Proposed § 7.1024(e)(4), like current 12 CFR 7.3001(d), provides that in conducting sharing arrangements, national banks and Federal savings associations would be required to ensure that each arrangement complies with all applicable laws or regulations. Proposed § 7.1024(e)(4), like current 12 CFR 7.3001(d), lists three requirements, which are illustrative and not exhaustive.

Permissible Means of Holding Real Estate and Fixed Assets (§ 7.1024(f))

Proposed § 7.1024(f) provides technical information related to permissible means of holding real estate and fixed assets. These provisions are substantially similar to the provisions in current 12 CFR 7.1024(a)(3), (b), and (c).

Transition (§ 7.1024(g))

Proposed § 7.1024(g) provides that as of XX, 20XX, a national bank or Federal savings association that holds an investment in real estate, fixed assets, banking premises, or other real property that complies with the legal requirements in effect prior to XX, 20XX, but would violate any provision of proposed § 7.1024, would be permitted to continue to hold the investment in accordance with the prior legal requirements. However, a national bank or Federal savings association holding such an investment cannot modify, expand, or improve the investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office. Proposed § 7.1024(g) grandfathers national banks or Federal savings associations that currently have permissible real estate investments that would no longer be permissible under the proposed revisions. The proposed rule would supersede outstanding OCC precedent (and former OTS precedent) in this area to the extent it is inconsistent with the proposed rule. While national banks and Federal savings associations would be able to continue to rely on this precedent, including interpretive letters, with respect to current real estate investments, national banks and Federal savings associations would not be able to rely on this precedent with respect to future real estate investments. The proposed rule would not affect outstanding precedent regarding 12 CFR 7.1000 or 12 CFR 7.3001.

Question Ten: The OCC requests comment on the appropriate parameters of a national bank or Federal savings association's ability to hold real estate subject to the transition rule in § 7.1024(g). Specifically, should a renewal, modification, or termination of a lease constitute a ''modification'' subject to the transition rule? Should other activities besides ''routine maintenance'' be permitted under the transition rule?

IV. Administrative Law Matters

Paperwork Reduction Act. In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed the notice of proposed rulemaking and determined that it would not introduce any new or revise any existing collection of information pursuant to the PRA. Therefore, no submission will be made to OMB for review.

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

Unfunded Mandates Reform Act. Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, the OCC considers whether the proposed rule includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million adjusted for inflation (currently $157 million) in any one year. The OCC estimates the expenditures that may be associated with compliance costs for this proposed rule, if implemented, would be as much as $412,000. The estimate for expenditures is for modifying a bank's policies and procedures on premises. However, it should be noted that the proposed rule does not require banks to modify their policies and procedures. 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.

Riegle Community Development and Regulatory Improvement Act. Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. Although the proposed rule does not impose additional reporting, disclosures, or other new requirements on insured depository institutions, the OCC invites comments that will inform its consideration of the administrative burdens and the benefits of its proposal, as well as the effective date of the final rule.

List of Subjects in 12 CFR Part 7

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds.

Authority and Issuance

For the reasons stated in the preamble, the OCC proposes to amend 12 CFR part 7 as follows.

PART 7—ACTIVITIES AND OPERATIONS

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

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m) and 5412(b)(2)(B).

■ 2. Amend Part 7 by adding § 7.1024 to read as follows:

§ 7.1024 National bank or Federal savings association ownership of property.

(a) *Definitions.*

(1) *Bank occupied office premises* means bank occupied premises containing offices where professional or clerical duties are performed.

(2) *Bank occupied premises* means real estate acquired and held in good faith and in which more than 50 percent of each building or severable piece of land is, or consistent with paragraph (c)(2)(ii) of this section—, will be used by bank persons for the transaction of a national bank's or Federal savings association's business, including facilities that may be operated by third parties to provide amenities and services to bank persons or otherwise facilitate national bank or Federal savings association business operations.

(3) *Bank persons* mean a national bank or Federal savings association's employees, contractors, consultants, vendors, and any other individuals who are engaged in the national bank or Federal savings association's business.

(4) *Impermissible premises* means real estate that is not bank occupied premises or that otherwise does not conform with the requirements of this section.

(5) *Shared space* means bank occupied office premises that a national bank or Federal savings association shares with a third party to enhance the national bank's business operations.

(b) *Investment in real estate necessary for the transaction of business.* A national bank or Federal savings association may acquire, hold, or convey real estate for use as bank occupied premises.

(c) *Excess space and capacity.*

(1) A national bank or Federal savings association may, in order to optimize the use of bank occupied premises or avoid economic loss or waste, permit third parties to use excess space or capacity in real estate legitimately acquired or developed by the national bank or Federal savings association for its banking business. Such excess space or capacity must have a nexus with the transaction of the bank's business or bank operations for the national bank or Federal savings association such that it is acquired or held to provide the bank with a business location rather than as an investment in real estate.

(2) With respect to bank occupied premises, legitimate excess space or capacity that may be used by third parties can arise in a variety of situations, including the following:

(i) Due to the characteristics of the real estate available in the market, the space or capacity to meet a national bank or Federal savings association's requirements exceeds its present needs;

(ii) The acquisition and retention of additional space or capacity, beyond present needs, reasonably may be necessary for planned future expansion or to meet a national bank's or Federal savings association's expected future banking needs as long as the national bank or Federal savings association uses the additional capacity in the real estate acquired for future national bank or Federal savings association expansion or banking needs within five years;

(iii) Requirements for capacity fluctuate because a national bank or Federal savings association may need to use the full capacity of a space during peak periods resulting in periods when its capacity is underutilized;

(iv) After the initial acquisition of real estate thought to be fully needed for banking operations, a national bank or Federal savings association experiences a decline in the level of banking operations or an increase in efficiency resulting in underutilized space or capacity; and

(v) A national bank or Federal savings association has capacity to allow third parties after-hours use of bank occupied premises.

(d) *Impermissible premises.* A national bank or Federal savings association may not acquire, hold, or convey impermissible premises, except as otherwise permitted by 12 U.S.C. 29 or 1464, respectively, or other applicable law.

(e) *Sharing national bank space and employees in jointly held bank occupied office premises.*

(1) *Shared space.* A national bank or Federal savings association may share space in bank occupied office premises

jointly held with one or more other businesses.

(2) *Shared employees.* When sharing space with other businesses as described in paragraph (e)(1) of this section, a national bank or Federal savings association may provide, under one or more written agreements between the national bank or Federal savings association, the other business, and their employees, that:

(i) A national bank or Federal savings association employee may act as agent for the other business; or

(ii) An employee of the other business may act as agent for the national bank or Federal savings association.

(3) *Supervisory conditions.* When a national bank or Federal savings association engages in arrangements of the types listed in paragraphs (e)(1) and (2) of this section, the national bank or Federal savings association must ensure:

(i) The other business is conspicuously, accurately, and separately identified;

(ii) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the national bank or Federal savings association and of the other businesses so that customers will know the identity of the national bank, Federal savings association, or other business that is providing the product or service;

(iii) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(iv) All aspects of the relationship between the national bank or Federal savings association and the other business are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the national bank or Federal savings association;

(v) Security issues arising from the activities of the other business on the premises are addressed;

(vi) The activities of the other business do not adversely affect the safety and soundness of the national bank or Federal savings association;

(vii) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and

(viii) The assets and records of the parties are segregated.

(4) *Other legal requirements.* When entering into arrangements of the types described in paragraphs (e)(1) and (2) of this section, and in conducting operations pursuant to those arrangements, a national bank or Federal savings association must ensure that each arrangement complies with all applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer, or employee of the national bank or Federal savings association:

(i) The national bank or Federal savings association must ensure compliance with all applicable statutory and regulatory provisions governing national bank or Federal savings association transactions with these persons or entities;

(ii) The parties must comply with all applicable fiduciary duties; and

(iii) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

(f) *Permissible means of holding real estate and fixed assets.*

(1) *Permissible means of holding.* A national bank or Federal savings association may acquire and hold real estate under paragraph (b) of this section by any reasonable and prudent means, including ownership in fee, a leasehold estate, or in an interest in a cooperative. A national bank or Federal savings association may hold this real estate directly or through one or more subsidiaries. A national bank or Federal savings association may organize a bank occupied premises subsidiary as a corporation, partnership, limited liability company, or any other similar entity.

(2) *Fixed assets.* A national bank or Federal savings association may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing equipment.

(3) *Investment in banking premises.*

(i) *Premises investment and approval.* A national bank or Federal savings association must comply with the investment and approval requirements for investment in banking premises in 12 CFR 5.37(d).

(ii) *Option to purchase.* An unexercised option to purchase banking premises or stock in a corporation holding banking premises is not an investment in banking premises. However, a national bank or Federal savings association seeking to exercise such an option must comply with the requirements in 12 CFR 5.37(d).

(g) *Transition.* If, on XX, 20XX, a national bank or Federal savings association holds an investment in real estate, fixed assets, banking premises, or other real property that complies with the legal requirements in effect prior to XX, 20XX, but would violate any provision of this section, the national bank or Federal savings association may continue to hold such investment in accordance with the prior legal requirements. However, a national bank or Federal savings association that holds such an investment may not modify, expand, or improve this investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office.

§ 7.3001 [Removed]

■ 3. Remove § 7.3001.

Brian P. Brooks,

Acting Comptroller of the Currency.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119890–18]

RIN 1545–BP92

Section 42, Low-Income Housing Credit Average Income Test Regulations; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations setting forth guidance on the average income test for purposes of the low-income housing credit.

DATES: The public hearing is being held on Wednesday, March 24, 2021 at 12 p.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Friday, March 5, 2021. If no outlines are received by March 5, 2021, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held by teleconference. Individuals who want to testify (by telephone) at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–119890–18] and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–119890–18. The email must include the name(s) of the speaker(s) and title(s). Send outline submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–119890–18). The email must be received by March 5, 2021.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Dillon Taylor or Michael J. Torruella Costa at (202) 317–4137; concerning submissions of comments, the hearing, and the access code to attend the hearing by teleconferencing, Regina Johnson at (202) 317–5177 (not toll-free numbers) or *publichearings@irs.gov.* If emailing please put Attend, Testify, or Agenda Request and [REG–119890–18] in the email subject line.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking REG–119890–18 that was published in the **Federal Register** on Friday, October 30, 2020, 85 FR 68816.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments telephonically at the hearing that previously submitted written comments by December 29, 2020, must submit an outline on the topics to be addressed and the amount of time to be devoted to each topic by March 5, 2021.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available by emailing your request to *publichearings@irs.gov.* Please put ''REG–119890–18 Agenda Request'' in the subject line of the email.

Individuals who want to attend (by telephone) the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–119890–18] and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–119890–18. The email requesting to attend the public hearing must be received by 5:00 p.m. two (2) business days before the date that the hearing is scheduled.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number) at least three (3) days prior to the date that the telephonic hearing is scheduled.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

Crystal Pemberton,

Senior Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2021–02146 Filed 2–2–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115057–20]

RIN 1545–BP98

Mandatory 60-Day Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the new mandatory 60-day postponement of certain time-sensitive tax-related deadlines by reason of a Federally declared disaster.

DATES: The public hearing is being held on Tuesday, March 23, 2021 at 10:00 a.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Monday, March 15, 2021. If no outlines are received by March 15, 2021, the public hearing will be cancelled.

ADDRESSES: The public hearing is being held by teleconference. Individuals who want to testify (by telephone) at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–115057–20] and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–115057–20. The email must include the name(s) of the speaker(s) and title(s). Send outline submissions electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–115057–20). The email must be received by March 15, 2021.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William V. Spatz at (202) 317–5461; concerning submissions of comments, the hearing, and the access code to attend the hearing by teleconferencing, Regina Johnson at (202) 317–5177 (not toll-free numbers) or *publichearings@irs.gov.* If emailing please put Attend, Testify, or Agenda Request and [REG–115057–20] in the email subject line.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking REG–115057–20 that was published in the **Federal Register** on Wednesday, January 13, 2021, 86 FR 2607.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments telephonically at the hearing that previously submitted written comments by March 15, 2021, must submit an outline on the topics to be addressed and the amount of time to be devoted to each topic by March 15, 2021.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available by emailing your request to *publichearings@irs.gov.* Please put ''REG–115057–20'' Agenda Request'' in the subject line of the email.

Individuals who want to attend (by telephone) the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number [REG–115057–20] and the word ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG–115057–20. The email requesting to attend the public hearing must be received by 5:00 p.m. two (2) business days before the date that the hearing is scheduled.

The telephonic hearing will be made accessible to people with disabilities. To request special assistance during the telephonic hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–5177 (not a toll-free number) at least three (3) days prior to the date that the telephonic hearing is scheduled.

Any questions regarding speaking at or attending a public hearing may also be emailed to *publichearings@irs.gov.*

Crystal Pemberton,

Senior Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2021–02183 Filed 2–2–21; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 86, No. 21
Wednesday, February 3, 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.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–04–2021]

Foreign-Trade Zone (FTZ) 22—Chicago, Illinois, Notification of Proposed Production Activity, AbbVie, Inc. (Pharmaceutical Products), North Chicago and Lake County, Illinois

AbbVie, Inc. (AbbVie) submitted a notification of proposed production activity to the FTZ Board for its facilities in North Chicago and Lake County, Illinois. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on January 27, 2021.

AbbVie already has authority to produce pharmaceutical products within Subzone 22S. The current request would add a finished product and a foreign status material to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status material and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt AbbVie from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, AbbVie would be able to choose the duty rates during customs entry procedures that applies to IMBRUVICA® tablets (duty-free). AbbVie would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material sourced from abroad is Ibrutinib active pharmaceutical ingredient (duty rate 6.5%). The request indicates that Ibrutinib is subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 15, 2021.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: January 28, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–02234 Filed 2–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–833]

Citric Acid and Certain Citrate Salts From Thailand: Partial Rescission of Antidumping Duty Administrative Review, 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on citric acid and certain citrate salts (citric acid) from Thailand covering the period of review (POR) July 1, 2019, through June 30, 2020, in part, with respect to Niran (Thailand) Co., Ltd. (Niran), based on a timely withdrawal of the request for review for Niran.

DATES: Applicable February 3, 2021.

FOR FURTHER INFORMATION CONTACT: Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2020, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on citric acid from Thailand for the period July 1, 2019, through June 30, 2020.[1] Based on timely requests from COFCO Biochemical (Thailand) Co., Ltd. (COFCO), Sunshine Biotech International Co., Ltd. (Sunshine), and Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas LLC, domestic producers of the subject merchandise and petitioners in the original investigation (collectively, the petitioners),[2] on September 3, 2020, in accordance with 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce published in the **Federal Register** a notice of initiation of administrative review covering COFCO, Sunshine, and Niran.[3] On September 17, 2020, Commerce selected COFCO and Sunshine for individual examination and issued the antidumping duty questionnaire to the companies.[4]

On September 18, 2020, Niran filed a no-shipment certification.[5] On October 8, 2020, U.S. Customs and Border Protection (CBP) confirmed that there were no shipments of subject merchandise from Niran during the

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 39531 (July 1, 2020).

[2] *See* COFCO's Letter, ''Citric Acid and Certain Citrate Salts from Thailand: Request for Administrative Review,'' dated July 28, 2020; *see also* Sunshine's Letter, ''Antidumping Duty Investigation of Citric Acid and Certain Citrate Salts from Thailand: Sunshine Biotech Request for Review,'' dated July 31, 2020; and Petitioners' Letter, ''Citric Acid and Certain Citrate Salts From Thailand: Petitioners' Request For Administrative Review,'' dated July 30, 2020 (the petitioners requested review of COFCO, Sunshine, and Niran).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 172 (September 3, 2020).

[4] *See* Memorandum, ''Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from Thailand; 2019–2020: Selection of Respondents for Individual Examination,'' dated September 17, 2020. *See also* Antidumping Questionnaires sent to COFCO and Sunshine, dated September 21, 2020.

[5] *See* Niran's Letter, ''Citric Acid and Certain Citrate Salts from Thailand: No Shipment Certification,'' dated September 18, 2020.

POR.[6] On November 19, 2020, the petitioners withdrew their request for an administrative review with respect to Niran.[7]

Scope of the Order

The merchandise covered by the order is citric acid and certain citrate salts from Thailand. The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

The scope also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate.

The scope includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The aforementioned withdrawal request was timely submitted, and no other interested party requested an administrative review of this particular company. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice,[8] we are rescinding this review of the antidumping duty order on citric acid from Thailand, in part, with respect to Niran.

The review will continue with respect to COFCO and Sunshine.

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries. For Niran, for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2019, through June 30, 2020, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: January 29, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–02232 Filed 2–2–21; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See* Memorandum, ''Citric Acid and Certain Citrate Salts from Thailand (A–549–833): No shipments inquiry with respect to the company listed below during the period 7/1/2019 through 6/30/2020,'' dated October 9, 2020.

[7] *See* Petitioners' Letter, ''Citric Acid and Certain Citrate Salts From Thailand: Partial Withdrawal of Request For Administrative Review,'' dated November 19, 2020.

[8] *See, e.g., Certain Lined Paper Products from India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781 (May 11, 2009); *see also Carbon Steel Butt-Weld Pipe Fittings from Thailand: Rescission of Antidumping Duty Administrative Review,* 74 FR 7218 (February 13, 2009).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–843]

Prestressed Concrete Steel Wire Strand From the Republic of Turkey: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order on prestressed concrete steel wire strand (PC strand) from the Republic of Turkey (Turkey).

DATES: Applicable February 3, 2021.

FOR FURTHER INFORMATION CONTACT: Jacob Garten at (202) 482–3342, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2020, Commerce published its affirmative final determination in the countervailing duty investigation of PC Strand from

Turkey.[1] On January 25, 2021, the ITC notified Commerce of its final determination, pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of subsidized imports of PC strand from Turkey.[2]

Scope of the Order

The scope of the investigation is PC strand from Turkey. For a complete description of the scope of this order, *see* the appendix to this notice.

Countervailing Duty Order

On January 25, 2021, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that an industry in the United States s materially injured by reason of imports of PC strand from Turkey.[3] As a result, and in accordance with sections 705(c)(2) and 706 of the Act, we are issuing this countervailing duty order. Because the ITC determined that imports of PC strand from Turkey are materially injuring a U.S. industry, unliquidated entries of such merchandise from Turkey, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Countervailing duties will be assessed on unliquidated entries of PC strand from Turkey entered, or withdrawn from warehouse, for consumption on or after September 21, 2020, the date of publication of the *Preliminary Determination,*[4] but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determination under section 705(b) of the Act, as further described below.

Suspension of Liquidation and Cash Deposits

In accordance with section 706 of the Act, Commerce will direct CBP to suspend liquidation of PC strand from Turkey, as described in the appendix to this notice, effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise. On or after the publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated import duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice.

Company	Subsidy rate (percent)
Celik Halat ve Tel San A.S.[5]	158.44
Guney Celik Hasir ve Demir	30.78
All Others[6]	94.61

Provisional Measures

Section 703(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigation, Commerce published the *Preliminary Determination* on September 21, 2020. As such, the four-month period beginning on the date of the publication of the *Preliminary Determination* ended on January 19, 2021. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 703(d) of the Act, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of PC strand from Turkey, entered, or withdrawn from warehouse, for consumption, on or after January 20, 2021, the date on which the provisional measures expired, until and through January 28, 2021, the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.[7] Suspension of liquidation will resume on January 29, 2021, the date of publication of the ITC's final determination in the **Federal Register**.

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to PC strand from Turkey, pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.* This order is published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: January 29, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Order

The merchandise covered by this order is prestressed concrete steel wire strand (PC strand), produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft2 standard set forth in ASTM–A–475.

The PC strand subject to this order is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2021–02335 Filed 2–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Rice University, et. al; Notice of Decision on Applicationfor Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On November 25, 2020, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. *See*

[1] *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination,* 85 FR 80005 (December 11, 2020) (*Final Determination*).

[2] *See* ITC's Letter, ''Notification of ITC Final Determinations,'' dated January 25, 2021 (ITC Notification Letter).

[3] *See* ITC Notification Letter.

[4] *See Prestressed Concrete Steel Wire from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part,* 85 FR 59287 (September 21, 2020) (*Preliminary Determination*).

[5] Commerce found the following companies to be cross-owned with Celik Halat: Dogan Sirketler Grubu Holding A.S. and Adilbey Holding A.S. *See Final Determination,* 85 FR at 80006 n.8.

[6] The all-others rate applies to all other producers or exporters not specifically listed.

[7] *See Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates; Determinations,* 86 FR 7564 (January 29, 2021).

Application(s) for Duty-Free Entry of Scientific Instruments, 85 FR 75302–03, November 25, 2020 (*Notice*). We received no public comments.

Docket Number: 20–008. Applicant: Rice University, 6100 Main Street, Houston, TX 77005. Instrument: Signal Acquisition ASCI. Manufacturer: LiMicro, China. Intended Use: See Notice at 85 FR 75302–03, November 25, 2020. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of order. Reasons: According to the applicant, the instrument will be used to study and investigate in-vivo large-scale, high-density, long-term, neutral recording to integrate the signal acquisition instrument that it plans to purchase with its custom developed ultra-flexible nano electronic thread (NET) microelectrodes as a neural recording system to monitor chronic neural signals in freely behaving animals. The applicant also plans to investigate the formation of connections between various brain regions and the evolution of the neutral connections over extended periods. This large-scale, high-density, long-term neural recording study has the potential to help understand the fundamental mechanisms of neural circuitry and explore treatments for neurological conditions.

Docket Number: 20–009. Applicant: University of Chicago, Chemistry E005A, 929 E 57th Street (loading docket behind 5741 S Drexel Avenue), Chicago, IL 60637. Instrument: White Dwarf Optimal Parametric Amplifier System (OPCPA). Manufacturer: Class 5 Photonics, GmbH, Germany. Intended Use: According to the applicant, the instrument will be used to study and determine how the local electronic structure of nanostructured materials is related to their morphology, and directly measure the electronic transitions at buried interfaces in materials, controlling anisotropic charge transport via photoinduced strain effects, manipulating energy transfer in polaritonic systems. The OPCPA is a work-horse laser system for simultaneous use with multiple experiments. The experiments to be conducted involve time-resolved photoemission microscopy of both occupied and unoccupied electronic structure of materials, heterodyned electronic sum-frequency-generation spectroscopy, transient absorption spectroscopy.

Dated: January 28, 2021.

Richard Herring,

Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2021–02233 Filed 2–2–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA850]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Law Enforcement Committee; Habitat and Ecosystem-Based Management Committee, Mackerel Cobia Committee, Snapper Grouper Committee; Dolphin Wahoo Committee; Southeast Data, Assessment and Review (SEDAR) Committee (partially Closed Session); and Executive Committee. The meeting week will also include a formal public comment session and a meeting of the Full Council. Due to public health concerns associated with COVID–19 and current travel restrictions the meeting will be held via webinar.

DATES: The Council meeting will be held from 12:30 p.m. on Monday, March 1, 2021 until 12 p.m. on Friday, March 5, 2021.

ADDRESSES:

Meeting address: The meeting will be held via webinar. Webinar registration is required. Details are included in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Meeting information, including agendas, overviews, and briefing book materials will be posted on the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.* Webinar registration links for each meeting day will also be available from the Council's website.

Public comment: Written comments may be directed to John Carmichael, Executive Director, South Atlantic Fishery Management Council (see *Council address*) or electronically via the Council's website at *http://safmc.net/safmc-meetings/council-meetings/.* Comments received by close of business the Monday before the meeting (2/22/21) will be compiled, posted to the website as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the website. Written comments submitted after the Monday before the meeting must use the Council's online form available from the website. Comments will automatically be posted to the website and available for Council consideration. Comments received prior to 9 a.m. on Thursday, March 4, 2021 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Council Session I, Monday, March 1, 2021, 12:30 p.m. until 3:30 p.m.

The Council will receive an update on the Acceptable Biological Catch (ABC) Control Rule Amendment and review an Exempted Fishing Permit (EFP) request and provide recommendations. The Council will also receive a presentation on the Regional Electronic Technologies Plan: 2020–2024 from NOAA Fisheries and receive a presentation on the Kitty Hawk Offshore Wind Project.

Law Enforcement Committee, Monday, March 1, 2021, 3:30 p.m. until 4:30 p.m.

The Committee will receive a report from the Law Enforcement Advisory Panel (AP), review the structure of the Law Enforcement AP, and provide recommendations.

Habitat Protection and Ecosystem-Based Management Committee, Tuesday, March 2, 2021, 8:30 a.m. until 10 a.m.

The Committee will review Amendment 10 to the Coral Fishery Management Plan (FMP) addressing modifications to area closures for the deepwater shrimp fishery and is scheduled to approve for public hearings. The Committee will also receive updates on the Fishery Ecosystem Plan (FEP) II Roadmap and the Habitat and Ecosystem Blueprint, and approve agenda items for the next meeting of the Habitat Protection and Ecosystem-Based Management AP.

Mackerel Cobia Committee, Tuesday, March 2, 2021, 10 a.m. until 12 p.m.

The Committee will review the Coastal Migratory Pelagic (CMP) Framework Amendment 10 addressing management measures for Atlantic king mackerel and receive an update on CMP Amendment 32 addressing management measures to end overfishing for Gulf of Mexico cobia. The Committee will also review a white paper on a possible joint Spanish Mackerel AP with the Atlantic States Marine Fisheries Commission and approve agenda items for the next meeting of the Mackerel Cobia Advisory Panel.

Snapper Grouper Committee, Tuesday, March 2, 2021, 1:30 p.m. until 5:30 p.m. and Wednesday, March 3, 2021 from 8:30 a.m. until 10 a.m.

The Committee will receive a fishery overview and presentation on the recent stock assessment for snowy grouper, review Amendment 48 to the Snapper Grouper FMP addressing Wreckfish ITQ Modernization, and review public scoping comments and analyses for Amendment 50 to the Snapper Grouper FMP pertaining to measures to end overfishing and revise the rebuilding plan for red porgy. The Committee will review Amendment 49 to the Snapper Grouper FMP addressing catch levels and management measures for greater amberjack and is scheduled to approve the amendment for scoping.

The Committee will also receive updates on regional research projects on greater amberjack and red snapper, an update from NOAA Fisheries on red snapper recreational landings and status of the 2021 red snapper season, and approve agenda items for the next meeting of the Snapper Grouper AP.

Dolphin Wahoo Committee, Wednesday, March 3, 2021, 10 a.m. until 12 p.m. and 1:30 p.m. until 3:45 p.m.

The Committee will review public hearing comments as well as actions and alternatives for Amendment 10 to the Dolphin Wahoo FMP with actions addressing revisions to recreational data and catch level recommendations, modifications to recreational accountability measures, measures to allow properly permitted commercial vessels with trap, pot or buoy gear on board to possess commercial quantities of dolphin and wahoo, remove the Operator Card requirement, reduce the recreational vessel limit for dolphin, reduce the recreational bag limit and establish a recreational vessel limit for wahoo, and allow filleting of dolphin at sea on board charter or headboat vessels in waters north of the Virginia/North Carolina border. The Committee will also review the updated goals and objectives of the Dolphin Wahoo FMP and provide recommendations for timing of the next Dolphin Wahoo AP meeting.

Formal Public Comment, Wednesday, March 3, 2021, 4 p.m..—Public comment will be accepted via webinar on all items on the Council meeting agenda. Highlighted items: Public scoping comments will be accepted during this time for Amendment 48 to the Snapper Grouper FMP (Wreckfish ITQ Modernization) and Framework Amendment 10 to the Coastal Migratory Pelagics FMP (king mackerel). Additionally, the Council is scheduled to approve Amendment 49 to the Snapper Grouper FMP (greater amberjack) for public scoping and Amendment 10 to the Coral FMP (deepwater shrimp area closures) for public hearings. Hearings for Snapper Grouper Amendment 49 and Coral Amendment 10 will be held at later dates. The Council Chair will determine the amount of time provided to each commenter based on the number of individuals wishing to comment.

SEDAR Committee, Thursday, March 4, 2021, 8:30 a.m. until 10:30 a.m. (Partially Closed Session)

The Committee will make appointments for the SEDAR 79 stock assessment for mutton snapper during Closed Session. In Open Session, the Committee will receive an update on the SEDAR 76 stock assessment for South Atlantic black sea bass.

Executive Committee, Thursday, March 4, 2021, 10:30 a.m. until 12 p.m.

The Committee will review updates to the Council's Advisory Panel Policy, a proposed Council Symposium Series addressing various topics, updates to the Council's Handbook and the Council's 2021 Workplan.

Council Session II, Thursday, March 4, 2021, 1:30 p.m. until 5 p.m. and Friday, March 5, 2021 from 8:30 a.m. until 12 p.m.

The Council will receive a report from the Executive Director, staff updates on development of the Council's Allocation Tool to determine sector allocations, Climate Change Scenario Planning and the Council's Citizen Science Program. A demonstration of the new Fish Rules mobile app for commercial regulations will be provided.

The Council will receive a report from the Council's Recreational Reporting Working Group.

NOAA Fisheries Southeast Fisheries Science Center staff will provide an update on the pandemic's impacts on sampling and monitoring and a report on the status of commercial electronic logbooks. NOAA Fisheries Southeast Regional Office staff will provide an update on the status of For-Hire Electronic Reporting and the status of their evaluation of bycatch reporting efforts in the South Atlantic. The Council will also receive a Protected Resources report.

The Council will receive reports from the following committees: Law Enforcement; Habitat Protection and Ecosystem-Based Management; Snapper Grouper; Dolphin Wahoo; Mackerel Cobia; SEDAR; and Executive.

The Council will receive agency and liaison reports, discuss other business and upcoming meetings, and take action as necessary.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

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 these meetings. 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 Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 29, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–02247 Filed 2–2–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA815]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Naval Base San Diego Pier 6 Replacement Project, San Diego, California

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, marine mammals during activities associated with the Naval Base San Diego Pier 6 Replacement Project in San Diego, California.

DATES: This Authorization is effective from October 1, 2021 through September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

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

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

Summary of Request

On July 14, 2020, NMFS received an application from the Navy requesting an IHA to take small numbers of California sea lions incidental to pile driving and removal associated with the Naval Base San Diego Pier 6 Replacement Project. The application was deemed adequate and complete on November 25, 2020. The Navy's request is for take of a small number of California sea lions by Level B harassment. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The purpose of the project is to remove and replace a decaying and inadequate pier for Navy ships. Specifically, in-water construction work includes removing the existing pier (by vibratory pile extraction, water jetting, hydraulic underwater chainsaw, direct pulling, and/or pile clippers) consisting of a total of 1,998 12 to 24-inch piles, after removing above water structures and utilities. Once demolition has opened up space, construction will begin in the same location on a new pier measuring 37 meters (m) (120 feet (ft)) wide by 457 m (1,500 ft) long. New construction work involves impact driving of 966 piles. This includes 528 24-inch structural concrete piles, 208 24-inch concrete fender piles, 4 20-inch piles for a load-out ramp, and 226 16-inch fiberglass secondary and corner fender piles. Pile driving/removal is expected to take no more than 250 days. Pile driving would be by vibratory pile driving until resistance is too great and driving would switch to an impact hammer.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (85 FR 80027; December 11, 2020). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Response

A notice of NMFS's proposal to issue an IHA to the Navy was published in the **Federal Register** on December 11, 2020 (85 FR 80027). That notice described, in detail, the Navy's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received no public comment or comment letter from the Marine Mammal Commission.

Description of Marine Mammals in the Area of Specified Activities

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

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

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific SARs (*e.g.,* Caretta *et al.,* 2020).

TABLE 1—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	United States	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.
[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual Morality/Serious Injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

California sea lions (*Zalophus californianus*) spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we are authorizing take of this species. Other marine mammal species observed in San Diego Bay are the coastal bottlenose dolphin (*Tursiops truncatus*), which is regularly seen in the North Bay; Pacific harbor seal (*Phoca vitulina*), which frequently enters the North Bay; and common dolphins (*Delphinus* spp.), which are rare visitors in the North Bay. Gray whales (*Eschrichtius robustus*) are occasionally sighted near the mouth of San Diego Bay during their winter migration (Naval Facilities Engineering Command, Southwest and Port of San Diego Bay, 2013). Based on many years of observations and numerous Navy-funded surveys in San Diego Bay (Merkel and Associates, Inc., 2008; Sorensen and Swope, 2010; Graham and Saunders, 2014; Tierra Data Inc., 2016), these other marine mammals rarely occur south of the Coronado Bay Bridge, are not known to occur near Naval Base San Diego, and any occurrence in the project area would be very rare. Therefore, while coastal bottlenose dolphins, Pacific harbor seals, common dolphins, and gray whales have been reported in San Diego Bay, they are not anticipated to occur in the project area and no take of these species is anticipated or authorized.

A detailed description of the of the species likely to be affected by the Navy's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (85 FR 80027; December 11, 2020); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

The effects of underwater noise from the Navy's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (85 FR 80027; December 11, 2020) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the Navy's construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (85 FR 80027; December 11, 2020).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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

Authorized takes would be by Level B harassment, as use of the acoustic source (*i.e.,* vibratory or impact pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown)—discussed in detail below in Mitigation section, Level A harassment is neither anticipated nor authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Due to the lack of marine mammal density, NMFS relied on local occurrence data and group size to estimate take. Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur Permanent Threshold Shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 decibel (dB) re 1 microPascal (μPa) (root mean square (rms)) for continuous (*e.g.,* vibratory pile-driving) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources.

The Navy's proposed activity includes the use of continuous (vibratory pile-driving, water jetting, chainsaw and pile clippers) and impulsive (impact pile-driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable. However, as discussed above, the Navy has established that the ambient noise in the project area is 126 dB re 1 μPa (rms). Since this is louder than the 120 dB threshold for continuous sources, 126 dB becomes the effective threshold for Level B harassment for continuous sources.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's activity includes the use of impulsive (impact pile-driving) and non-impulsive (vibratory pile driving/removal and other removal methods) sources.

These thresholds are provided in Table 2. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1* $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	*Cell 2* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3* $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	*Cell 4* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5* $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	*Cell 6* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7* $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	*Cell 8* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9* $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	*Cell 10* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile removal, water jetting, pile clippers and underwater chainsaws).

Vibratory hammers produce constant sound when operating, and produce vibrations that liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth or be withdrawn more easily. An impact hammer is a steel device that works like a piston, producing a series of independent strikes to drive the pile. Impact hammering typically generates the loudest noise associated with pile installation. The actual durations of each installation method vary depending on the type and size of the pile.

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (see Table 3). Data for the removal methods including water jetting, pile clippers and underwater chainsaws come from data gathered at other nearby Navy projects in San Diego Bay (NAVFAC SW, 2020), the source levels used are from the averages of the maximum source levels measured, a somewhat more conservative measure than the median sound levels we typically use.

TABLE 3—PROJECT SOUND SOURCE LEVELS

Pile driving activity: Method	Pile driving activity: Pile type	Estimated sound source level at 10 meters without attenuation: dB RMS	dB SEL	dB peak	Data source and proxy
Vibratory Extraction	12-inch timber/plastic	152			Greenbusch Group (2018).
	20 and 24-inch concrete	160			Caltrans (2015), Table I.2–2, 24-inch steel sheet.
	16-inch steel	160			Caltrans (2015), Table I.2–2, 24-inch steel sheet.
Water Jetting	20-inch concrete	158			NAVFAC SW (2020), 24 × 30-inch concrete.
Underwater Chainsaw	12 to 24-inch concrete	150			NAVFAC SW (2020), 16-inch concrete.*
Small Pile Clipper	12-inch timber/plastic	154			NAVFAC SW (2020), 13-inch polycarbonate.
Large Pile Clipper	20-inch concrete	161			NAVFAC SW (2020), 24-inch concrete.
Impact Hammer	20 and 24-inch concrete	176	166	188	Caltrans (2015), Table I.2–1, 24-inch concrete.
	16-inch fiberglass	153	** 144	** 177	Caltrans (2015), 13-inch plastic.

Note: SEL = single strike sound exposure level; dB peak = peak sound level; rms = root mean square.
* Source level was 147 dB at 17m from source, back calculated to 150dB using transmission loss coefficient of 15.
** Average of the peak values was 166 and that value was used in modelling in Dell'Osto and Dahl (2019) rather than the absolute peak we recommend for use in the user spreadsheet, SEL calculated from assumed strike rate in Dell'Osto and Dahl (2019).

During pile driving installation activities, there may be times when two pile extraction methods (pile clippers, water jetting, underwater chainsaws or vibratory pile removal) are used simultaneously. The likelihood of such an occurrence is anticipated to be infrequent, will depend on the specific methods chosen by the contractor, and would be for short durations on that day. In-water pile removal occurs intermittently, and it is common for removal to start and stop multiple times as each pile is adjusted and its progress is measured. Moreover, the Navy has multiple options for pile removal depending on the pile type and condition, sediment, and how stuck the pile is, etc. When two continuous noise sources, such as pile clippers, have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources. When two or more pile removal methods (pile clippers, water jetting, underwater chainsaws or vibratory pile removal) are used simultaneously, and the sound field of one source encompasses the sound field of another source, the sources are considered additive and combined using the following rules (see Table 4): For addition of two simultaneous methods, the difference between the two sound source levels (SSLs) is calculated, and if that difference is between 0 and 1 dB, 3 dB are added to the higher SSL; if difference is between 2 or 3 dB, 2 dB are added to the highest SSL; if the difference is between 4 to 9 dB, 1 dB is added to the highest SSL; and with differences of 10 or more dB, there is no addition (NMFS 2018b; WSDOT 2018).

TABLE 4—RULES FOR COMBINING SOUND LEVELS GENERATED DURING PILE REMOVAL

Difference in SSL	Level A zones	Level B zones
0 or 1 dB	Add 3 dB to the higher source level	Add 3 dB to the higher source level.
2 or 3 dB	Add 2 dB to the higher source level	Add 2 dB to the higher source level.
4 to 9 dB	Add 1 dB to the higher source level	Add 1 dB to the higher source level.
10 dB or more	Add 0 dB to the higher source level	Add 0 dB to the higher source level.

Source: Modified from USDOT 1995, WSDOT 2018, and NMFS 2018b.
Note: dB = decibels; SSL = sound source level.

There is also the possibility that impact installation of piles could happen simultaneously with any of the non-impulsive removal methods over large portions of the project as described above. On days when this occurs the Level A harassment zones would be based on the zones calculated for impact pile driving while the Level B harassment zone would be the largest of the zones for whatever construction methods are being used that day.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * Log10 (R1/R2), where
TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Navy's proposed activity in the absence of specific modelling. For this project however, the Navy did model sound propagation for the impact and vibratory hammering methods (Dall'Osto and Dahl 2019). For all other pile removal methods we used the practical spreading value.

The Navy determined underwater noise would fall below the behavioral effects threshold of 126 dB rms for marine mammals at distances of less than 10 to 7,140 m depending on the pile type(s) and methods (Table 5). It should be noted that based on the bathymetry and geography of San Diego Bay, sound will not reach the full distance of the Level B harassment isopleths in all directions. Because the Navy's as yet unhired contractor has not decided which of the various pile removal methods it will use, we only calculate a worst-case scenario of simultaneous operation of two of the loudest sound producing methods (large pile clippers) to consider the largest possible harassment zones for simultaneous pile removal.

TABLE 5—LEVEL A AND LEVEL B ISOPLETHS FOR EACH PILE DRIVING TYPE AND METHOD

Pile driving activity		Radial distance or maximum modeled length × width (m)	
Method	Pile type	Level A	Level B
Vibratory Extraction	12-inch timber/plastic	<10	2167 × 1065
	20 and 24-inch concrete	<10	6,990 × 1,173
	16-inch steel	<10	7,140 × 1,595
Water Jetting	20-inch concrete	<10	1359
Underwater Chainsaw	12 to 24-inch concrete	<10	398
Small Pile Clipper	12-inch timber/plastic	<10	736
Large Pile Clipper	20 to 24-inch concrete	<10	2154
Two Large Pile Clippers	20 to 24-inch concrete	<10	3415
Impact Hammer	20 and 24-inch concrete	<10	192
	16-inch fiberglass	<10	<10

Level A Harassment Zones

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of take by Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as impact/vibratory pile driving or removal using any of the methods discussed above, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS.

As discussed above, the Navy modelled sound propagation for impact and vibratory hammering of piles (Dall'Osto and Dahl 2019) and used those models to calculate Level A harassment isopleths. For all other pile removal methods we used the User Spreadsheet to determine the Level A harassment isopleths. Inputs used in the User Spreadsheet or models are reported in Table 6 and the resulting isopleths are reported in Table 6 for each of construction methods.

TABLE 6—NMFS TECHNICAL GUIDANCE USER SPREADSHEET INPUT TO CALCULATE LEVEL A ISOPLETHS FOR A COMBINATION OF PILE DRIVING

Pile driving activity		Radial distance or maximum modeled length × width (m)	
Method	Pile type	Piles per day	Strikes per pile/duration to drive a single pile
Vibratory Extraction	12-inch timber/plastic	8	10 min
	20 and 24-inch concrete	8	10 min
	16-inch steel	8	10 min
Water Jetting	20-inch concrete	8	20 min
Underwater Chainsaw	12 to 24-inch concrete	8	10 min
Small Pile Clipper	12-inch timber/plastic	8	10 min
Large Pile Clipper	20-inch concrete	8	10 min
Impact Hammer	20 and 24-inch concrete	7	600 strikes
	16-inch fiberglass	7	600 strikes

The above input scenarios lead to PTS isopleth distances (Level A thresholds) of less than 10 m for all methods and piles (Table 5).

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Here we describe how the information provided above is brought together to produce a quantitative take estimate.

No California sea lion density information is available for south San Diego Bay. Potential exposures to impact and vibratory pile driving noise for each threshold for California sea lions were estimated using data collected during a 2010 survey as reported in Sorensen and Swope (2010). During this survey two separate sea lions were observed in the project area.

The available survey data from Sorenson and Swope (2010) and other unpublished monitoring data from recent nearby projects on Naval Base San Diego suggests two California sea lions could be present each day in the project area. However given the limited data available and the more northerly location of this project relative to the recent dry dock project (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-floating-dry-dock-project-naval-base-san-diego*) where we estimate two California sea lions per day, to be conservative, we have estimated four California sea lions could be present each day. As noted above, there are 250 days of in-water work for this project. Multiplication of the above estimate of animals per day (4) times the days of work (250) results in a Level B harassment take of 1000 California sea lions (Table 7). The Navy intends to avoid Level A harassment take by shutting down activities if a California sea lion approaches within 20 m of the project site, which encompasses all Level A harassment ensonification zones. Therefore, no take by Level A harassment is anticipated or authorized.

TABLE 7—AUTHORIZED AMOUNT OF TAKING, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Authorized take		Percent of stock
	Level B	Level A	
California sea lion (*Zalophus californianus*) U.S. Stock	1,000	0	0.4

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are in the IHA:

- For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or entering the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures would apply to the Navy's in-water construction activities.

- *Establishment of Shutdown Zones*—The Navy will establish shutdown zones for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group (Table 4). In this case there is only one species affected and all level A harassment isopleths are less than 10 m radius. To be conservative, the Navy will establish a 20 m shutdown zone for all pile driving or removal activities.
- The placement of Protected Species Observers (PSOs) during all pile driving and removal activities (described in detail in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.
- *Monitoring for Level B Harassment*—The Navy will monitor the Level A and B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of PSOs will allow PSOs to observe marine mammals within the Level B harassment zones.
- *Pre-activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine

mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.

• *Soft Start*—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. This procedure will be conducted three times before impact pile driving begins. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Monitoring Plan and section 5 of the IHA. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

• Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;

• At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

• Other PSOs may substitute education (degree in biological science or related field) or training for experience;

• Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and

• The Navy must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Up to four PSOs will be employed. PSO locations will provide an unobstructed view of all water within the shutdown zone, and as much of the Level A and Level B harassment zones as possible. PSO locations are as follows:

(1) At the pile driving/removal site or best vantage point practicable to monitor the shutdown zones;

(2) For activities with Level B harassment zones larger than 400 m two additional PSO locations will be used. One will be across from the project location along Inchon Road at Naval Amphibious Base Coronado; and

(3) Two additional PSOs will be located in a small boat. The boat will conduct a pre-activity survey of the entire monitoring area prior to in-water construction. The boat will start from south of the project area (where potential marine mammal occurrence is lowest) and proceed to the north. When the boat arrives near the northern boundary of the Level B harassment zone (*e.g.,* just north of the western side of the Coronado Bridge as depicted in the Figures in the monitoring plan) it will set up station so the PSOs are best situated to detect any marine mammals that may approach from the north. The two PSOs aboard will split monitoring duties in order to monitor a 360 degree sweep around the vessel with each PSO responsible for 180 degrees of observable area.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than 30 minutes.

Hydroacoustic Monitoring and Reporting

The Navy has volunteered to conduct hydroacoustic monitoring of all pile driving and removal methods. Data will be collected for a representative number of piles (three to five) for each installation or removal method. As part of the below-mentioned report, or in a separate report with the same timelines as above, the Navy will provide an acoustic monitoring report for this work. Hydroacoustic monitoring results can be used to adjust the size of the Level B harassment and monitoring zones after a request is made and approved by NMFS. The acoustic monitoring report must, at minimum, include the following:

• Hydrophone equipment and methods: recording device, sampling rate, distance (m) from the pile where recordings were made; depth of recording device(s);
• Type of pile being driven or removed, substrate type, method of driving or removal during recordings;
• For impact pile driving: Pulse duration and mean, median, and maximum sound levels (dB re: 1μPa): SELcum, peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELs-s);
• For vibratory removal and other non-impulsive sources: Mean, median, and maximum sound levels (dB re: 1μPa): Root mean square sound pressure level (SPLrms), SELcum; and
• Number of strikes (impact) or duration (vibratory or other non-impulsive sources) per pile measured, one-third octave band spectrum and power spectral density plot.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring;
• Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory and if other removal methods were used);
• Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);
• The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
• Age and sex class, if possible, of all marine mammals observed;
• PSO locations during marine mammal monitoring;
• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);
• Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;
• Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone;
• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any; and
• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy shall report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
• Species identification (if known) or description of the animal(s) involved;
• Condition of the animal(s) (including carcass condition if the animal is dead);
• Observed behaviors of the animal(s), if alive;
• If available, photographs or video footage of the animal(s); and
• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

The nature of the pile driving project precludes the likelihood of serious injury or mortality. Take would occur within a limited, confined area (south-central San Diego Bay) of the stock's range. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further the amount of take authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile driving and removal would occur across six months, any harassment would be temporary. There are no other areas or times of known biological importance for any of the affected species.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or Level A harassment is anticipated or authorized;
- No important habitat areas have been identified within the project area;
- For all species, San Diego Bay is a very small and peripheral part of their range;
- The Navy would implement mitigation measures such as vibratory driving piles to the maximum extent practicable, soft-starts, and shut downs; and
- Monitoring reports from similar work in San Diego Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS authorizes is below one third of the estimated stock abundance of California sea lions (in fact, take of individuals is less than 1% of the abundance of the affected stock). This is likely a conservative estimate because they assume all takes are of different individual animals which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Navy for the potential harassment of small numbers of one marine mammal species incidental to the Naval Base San Diego Pier 6 Replacement project in San Diego, CA, provided the previously mentioned mitigation, monitoring and reporting requirements are followed.

Dated: January 27, 2021.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–02244 Filed 2–2–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA834]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public webinar meeting, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Tuesday, March 23, 2021, from 10 a.m. until 12 p.m.

ADDRESSES: The meeting will be held via webinar, which can be accessed at: *http://mafmc.adobeconnect.com/fsb-ap-mar-2021/.* Meeting audio can be accessed via telephone by dialing 1–800–832–0736 and entering room number 4472108.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will meet via webinar jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel. The purpose of this meeting is for the Advisory Panels to review public comments received on the Summer Flounder, Scup, Black Sea Bass Commercial/Recreational Allocation Amendment and to provide recommendations on the Council and Commission's selection of preferred alternatives for final action. More information on the amendment is available at: *http://www.mafmc.org/actions/sfsbsb-allocation-amendment.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Collins, (302) 526–5253, at least 5 days prior to the meeting date.

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

Dated: January 29, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–02245 Filed 2–2–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA844]

Fisheries of the US Caribbean; 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 80 Life History Topical Working Group Webinar I for U.S. Caribbean Queen Triggerfish.

SUMMARY: The SEDAR 80 stock assessment of U.S. Caribbean queen triggerfish will consist of a series of data webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 80 Life History Topical Working Group Webinar I will be held from 9 a.m. to 11 a.m. Eastern, March 10, 2021.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; Email: *Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the webinar are as follows:

- Participants will discuss and make recommendations regarding what life history data may be included in the assessment of U.S. Caribbean queen triggerfish.

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 physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 29, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–02246 Filed 2–2–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA838]

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 71 South Atlantic Gag Grouper Assessment Webinar V.

SUMMARY: The SEDAR 71 assessment of the South Atlantic stock of gag grouper will consist of a data webinar and a series assessment webinars.

DATES: The SEDAR 71 Gag Grouper Assessment Webinar V has been scheduled for Wednesday March 10, 2021, from 9 a.m. to 1 p.m., EDT.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/5223160031505921547.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; 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 71 Gag Grouper Assessment Webinar V are as follows:

- Finalize modeling and data discussions

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 South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 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 29, 2021.

Rey Israel Marquez,

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

[FR Doc. 2021–02248 Filed 2–2–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

[FE Docket No. 18–144–LNG]

Change In Control; ECA Liquefaction, S. de R.L. de C.V.

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a Statement of Change in Control (Statement) filed by ECA Liquefaction, S. de R.L. de C.V. (ECA Liquefaction) in the above-referenced docket on January 7, 2021. The Statement describes a change in upstream ownership of ECA Liquefaction. The Statement was filed under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, February 18, 2021.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Amy Sweeney or Jennifer Wade, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2627; (202) 586–4749, *amy.sweeney@hq.doe.gov* or *jennifer.wade@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

ECA Liquefaction states that it is a variable-capital, limited liability company organized under the laws of Mexico. ECA Liquefaction is owned approximately 99.99% by ECA LNG Holdings B.V. (ECA LNG Holdings), with the remainder owned by ECA Minority, S. de R.L. de C.V. ECA Liquefaction states that, prior to December 9, 2020, two companies—Sempra LNG ECA Liquefaction, LLC (Sempra LNG) and Infraestructura Energética Nova, S.A.B. de C.V. (IEnova)—each held a direct 50% ownership interest in ECA LNG Holdings.

On December 9, 2020, Sempra LNG, IEnova, and Total Gaz Electricité Holdings France S.A.S. (Total) entered into an equity issuance and subscription agreement whereby Total acquired a 16.6% equity interested in ECA LNG Holdings (Transaction). ECA Liquefaction states that Total is owned 100% by Total Holdings, S.A.S., which in turn is wholly owned by Total SE, a French energy company. ECA Liquefaction further states that an affiliate of Total, Total Gas & Power Asia Private Limited, is an existing customer of ECA Liquefaction. Following the Transaction, Sempra LNG and IEnova each retain a 41.7% ownership interest in ECA LNG Holdings.

Additional details can be found in ECA Liquefaction's Statement, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2021/01/f82/ECA%20-%20CIC%20Statement.pdf.*

DOE/FE Evaluation

DOE/FE will review ECA Liquefaction's Statement in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).[1] Consistent with the CIC Procedures, this notice addresses ECA Liquefaction's authorization to export liquefied natural gas (LNG) to non-free trade agreement (non-FTA) countries, granted in DOE/FE Order No. 4364, as amended by Orders No. 4364–A and 4364–B.[2] If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** to move to intervene, protest, and answer ECA Liquefaction's Statement.[3] Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in ECA Liquefaction's Statement. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: Emailing the filing to *fergas@hq.doe.gov;* (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to the individual FE Docket Number(s) in the title line, or ECA Liquefaction, S. de R.L. de C.V. Change in Control in the title line. *Please Note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

ECA Liquefaction's Statement, and any filed protests, motions to intervene, notices of intervention, and comments, are available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC, 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

ECA Liquefaction's Statement, and any filed protests, motions to intervene, notices of intervention, and comments, will also be available electronically by going to the following DOE/FE Web address: *https://www.energy.gov/fe/services/natural-gas-regulation.*

Signed in Washington, DC, on January 28, 2021.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2021–02217 Filed 2–2–21; 8:45 am]

BILLING CODE 6450–01–P

[1] 79 FR 65541 (Nov. 5, 2014).

[2] ECA Liquefaction's Statement also applies to its existing authorization to export LNG to FTA countries, but DOE/FE will respond to that portion of the document separately pursuant to the CIC Procedures, 79 FR 65542.

[3] Intervention, if granted, would constitute intervention only in the change in control portion of this proceeding, as described herein.

DEPARTMENT OF ENERGY

[FE Docket No. 20–99–LNG]

Southern LNG Company, L.L.C.; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on August 18, 2020, by Southern LNG Company, L.L.C. (Southern LNG). Southern LNG requests blanket authorization to export liquefied natural gas (LNG) previously imported into the United States by vessel from foreign sources in a volume equivalent to 182.5 billion cubic feet per year (Bcf/yr) of

natural gas on a cumulative basis over a two-year period. Southern LNG filed the Application under the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, March 5, 2021.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Beverly Howard or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387 or (202) 586–2627; *beverly.howard@hq.doe.gov* or *amy.sweeney@hq.doe.gov.*

Cassandra Bernstein or Irene V. Nemesio, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793 or (202) 586–8606; *cassandra.bernstein@hq.doe.gov* or *irene.nemesio@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Southern LNG requests a short-term blanket authorization to export LNG from the Elba Island Terminal located on Elba Island, Chatham County, Georgia, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. This includes both countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) and all other countries (non-FTA countries). This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). Southern LNG states that its existing blanket export authorization, set forth in DOE/FE Order No. 4206, is scheduled to expire on March 31, 2021. Southern LNG requests that the authorization commence on the earlier of either the date when all Movable Modular Liquefaction System units associated with the Elba Liquefaction Project have been placed in service or April 1, 2021. Southern LNG is not seeking authorization to export any domestically produced natural gas or LNG.

Southern LNG requests this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export. Additional details can be found in Southern LNG's Application, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2020/08/f77/20-99-LNG.pdf.*

DOE/FE Evaluation

In reviewing Southern LNG's Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 20–99–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 20–99–LNG. *Please note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on January 28, 2021.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2021–02218 Filed 2–2–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1515–001.
Applicants: Milligan 1 Wind LLC.
Description: Notice of Change in Status of Milligan 1 Wind LLC.
Filed Date: 1/27/21.
Accession Number: 20210127–5231.
Comments Due: 5 p.m. ET 2/17/21.

Docket Numbers: ER21–959–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: First Revised Transmission Service Agreement No. 493 to be effective 12/28/2020.
Filed Date: 1/27/21.
Accession Number: 20210127–5207.
Comments Due: 5 p.m. ET 2/17/21.

Docket Numbers: ER21–960–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1630R11 The Empire District Electric Company NITSA and NOA to be effective 1/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5048.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–961–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA and ICSA, SA Nos. 4095, 4107 and 4567 to be effective 2/22/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5073.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–962–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1876R7 KEPCO NITSA NOA to be effective 1/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5077.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–963–000.
Applicants: Silverstrand Grid, LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 2/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5102.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–964–000.
Applicants: Microsoft Energy LLC.
Description: Baseline eTariff Filing: Application for Market-based Rate Authority to be effective 1/29/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5120.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–965–000.
Applicants: Ventura Energy Storage, LLC.
Description: Baseline eTariff Filing: Ventura Energy Storage, LLC MBR Tariff to be effective 3/4/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5134.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–966–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Initial rate filing: Tri-State Submission of Balancing Authority Services Agreement to be effective 2/1/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5145.
Comments Due: 5 p.m. ET 2/18/21.

Docket Numbers: ER21–967–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–01–28_SA 2786 ITC Midwest-Interstate Power & Light 4th Rev GIA (J233 J514) to be effective 1/20/2021.
Filed Date: 1/28/21.
Accession Number: 20210128–5161.
Comments Due: 5 p.m. ET 2/18/21.

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 28, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02222 Filed 2–2–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5124–022]

Washington Electric Cooperative, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 5124–022.

c. *Date Filed:* October 30, 2020.

d. *Applicant:* Washington Electric Cooperative, Inc. (WEC).

e. *Name of Project:* North Branch No. 3 Hydroelectric Project.

f. *Location:* On the North Branch Winooski River in Washington County, Vermont. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ms. Patricia Richards, General Manager, Washington Electric Cooperative, Inc., P.O. Box 8, 40 Church Street East Montpelier, Vermont 05651; phone: (802) 223–5245 or email at *patty.richards@wec.coop.*

i. *FERC Contact:* Michael Tust at (202) 502–6522; or email at *michael.tust@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). 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 Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on July 15, 2020, revising the regulations under 40 CFR parts 1500—1518 that federal agencies use to implement NEPA (see Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43,304). The Final Rule became effective on and applies to any NEPA process begun after September 14, 2020. An agency may also apply the regulations to ongoing activities and environmental documents begun before September 14, 2020, which includes the proposed North Branch No. 3 Project relicensing. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. The existing North Branch 3 Project is located at the 115-foot-high, 1,525-foot-long Wrightsville Dam and consists of the following constructed facilities: A 445-foot-long, 5-foot-diameter steel aboveground penstock emerging from the base of the dam that conveys water to a 1,320-square-foot partially-buried project powerhouse containing three fixed blade turbines with rated capacities of 96, 259, and 578-kilowatts (kW) for a total installed capacity of 933 kW; a 750 square-foot substation located adjacent to the powerhouse that steps up the voltage from 4.16 kilovolts (kV) to 12.5 kV; a 450-foot-long, 12.5-kV transmission line; and appurtenant facilities.

WEC proposes to continue to operate its three turbine units to replicate near run-of-river operations and continue to maintain its existing minimum flows both within the bypassed reach (*i.e.,* 3.4 cfs) and downstream of the powerhouse (*i.e.,* 25 cfs). However, WEC proposes to modify operations by using its minimum flow gate to release more flow into the bypassed reach (up to 25 cfs) as generating units are turned on and off to reduce flow fluctuations downstream of the powerhouse. WEC also proposes to maintain the reservoir between an elevation of 634 and 635 feet year-round (rather than operating between 633–635 feet) and would cease all generation when reservoir levels fall below 634 feet.

WEC also proposes to bring the following existing facilities into the project boundary as project structures: The trash racks with one-inch spacing and the 9.5-foot by 6.5-foot headgate located within the non-project hydropower bay at the intake; the 1.3-foot by 1.5-foot automated minimum flow gate located at the base of the wall separating the two intake chambers used to pass minimum flows to the bypassed reach; the 100 square-foot hydraulic house located within the dam housing a hydraulic pump and controls used to operate the project headgate and minimum flow gate; and the 550-foot-long dirt road used to access the intake structure.

m. A copy of the application can viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural schedule:

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for filing comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	3/29/2021
Deadline for Filing Reply Comments	5/13/2021

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must be sent to the certifying authority and to the Commission concurrently.

Dated: January 28, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02223 Filed 2–2–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP21–402–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Yankee Gas 510802 Release eff 1–27–2021 to be effective 1/27/2021.
Filed Date: 1/26/21.
Accession Number: 20210126–5060.
Comments Due: 5 p.m. ET 2/8/21.

Docket Numbers: RP21–403–000.
Applicants: Bobcat Gas Storage.
Description: § 4(d) Rate Filing: Bobcat Title Transfer Process Update eff 03–02–2021 to be effective 3/2/2021.
Filed Date: 1/27/21.
Accession Number: 20210127–5120.
Comments Due: 5 p.m. ET 2/8/21.

Docket Numbers: RP21–404–000.
Applicants: Egan Hub Storage, LLC.
Description: § 4(d) Rate Filing: Egan Title Transfer Process Update eff 3–2–21 to be effective 3/2/2021.
Filed Date: 1/27/21.
Accession Number: 20210127–5121.
Comments Due: 5 p.m. ET 2/8/21.

Docket Numbers: RP21–405–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Compliance filing Big Sandy Fuel Filing effective 3/1/2021.
Filed Date: 1/27/21.
Accession Number: 20210127–5138.
Comments Due: 5 p.m. ET 2/8/21.

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 28, 2021.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2021–02226 Filed 2–2–21; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3783–007]

Rocky Brook Electric LP; Notice of Application for Amendment of Exemption Accepted for Filing and Soliciting Comments, Protests, Motions To Intervene, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Exemption.
b. *Project No:* 3783–007.
c. *Date Filed:* January 14, 2021.
d. *Applicant:* Rocky Brook Hydroelectric LP.
e. *Name of Project:* Rocky Brook Hydroelectric Project.
f. *Location:* The project is located on Rocky Brook in Jefferson County, Washington.
g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.
h. *Applicant Contact:* Dell Keehn, Partner, Rocky Brook Hydroelectric LP, 7829 Center Blvd. SE, Snoqualmie, WA 98065–9096, (425) 503–9866.
i. *FERC Contact:* Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov*.
j. *Deadline for filing comments, motions to intervene, protests, and terms and conditions:* March 1, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–3783–007.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests an amendment of the exemption to replace the four existing turbine-generator units with a single unit. The applicant also proposes to modify the tailrace such that the project would return water to Rocky Brook approximately 300 feet downstream of the current discharge location.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must: (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', or ''TERMS AND CONDITIONS'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests, motions to intervene, or terms and conditions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 28, 2021.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2021–02227 Filed 2–2–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2020–0717; FRL–10020–20–OGC]

Proposed Settlement Agreement, Challenge to Clean Air Act; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for a proposed Settlement Agreement to resolve petitions for review filed by the State of Wyoming (''Wyoming'') and PacifiCorp with respect to PacifiCorp's Wyodak electric generating unit (EGU). Notice of the proposed Settlement Agreement was published in the **Federal Register** on January 4, 2021. The notice provided for a 30-day public comment period ending on February 3, 2021. EPA received a request from the public seeking a 30-day extension of the comment period. In response to this request, EPA is extending the comment period for an additional 30 days until March 5, 2021.

DATES: The comment period for the proposed Settlement Agreement published January 4, 2021 (86 FR 87) is extended. Written comments must be received on or before March 5, 2021.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** notice of January 4, 2021 (86 FR 87) (FRL–10019–15–OGC).

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone: (202) 564–3244; email address: *hogan.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** document of January 4, 2021 (86 FR 87) (FRL–10019–15–OGC). In that document, EPA provided notice of a proposed Settlement Agreement to resolve petitions for review filed by Wyoming and PacifiCorp with respect to PacifiCorp's Wyodak EGU, and opened a 30-day public comment period on the proposed Settlement Agreement consistent with Clean Air Act section 113(g). EPA is hereby extending this comment period, which was set to end on February 3, 2021, to March 5, 2021. To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of January 4, 2021, 86 FR 87. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT** in this document.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2021–02207 Filed 2–2–21; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration Board, Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. Sec. 552b(e) (1)), of the forthcoming regular meeting of the Farm Credit Administration Board.

DATES: The regular meeting of the Board will be held February 11, 2021, from 9:00 a.m. until such time as the Board may conclude its business. *Note: Because of the COVID–19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.*

ADDRESSES: To observe the open portion of the virtual meeting, go to *FCA.gov*, select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board (703) 883–4009. TTY is (703) 883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public, and parts will be closed. If you wish to observe the open portion, follow the instructions above in the ''Attendance'' section at least 24 hours before the meeting. If you need assistance for accessibility reasons or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are as follows:

OPEN SESSION

A. Approval of Minutes

- January 14, 2021

CLOSED SESSION

- OSMO Periodic Report [1]

Dated: February 1, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2021–02354 Filed 2–1–21; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping Requirements Associated with Limitations on Interbank Liabilities (FR F; OMB No. 7100–0331).

DATES: Comments must be submitted on or before April 5, 2021.

ADDRESSES: You may submit comments, identified by FR F, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at

[1] Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and 9.

https://www.federalreserve.gov/apps/foia/proposedregs.aspx.

- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at *https://www.reginfo.gov/public/do/PRAMain,* if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

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

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Recordkeeping Requirements Associated with Limitations on Interbank Liabilities.

Agency form number: FR F.

OMB control number: 7100–0331

Frequency: On occasion.

Respondents: Depository institutions insured by the Federal Deposit Insurance Corporation (FDIC).

Estimated number of respondents: 5,066.

Estimated average hours per response: Creation: 7; maintenance: 1.

Estimated annual burden hours: Creation: 49; maintenance: 5,059.

General description of report: The Board's Regulation F—Limitations on Interbank Liabilities—establishes limits on depository institutions' credit exposure to individual correspondents in order to mitigate the risk that the failure of a correspondent would pose to an insured depository institution.[1] Section 206.3 of Regulation F (12 CFR 206.3) requires insured depository institutions to establish and maintain policies and procedures designed to prevent excessive exposure to correspondents. This regulation applies to all depository institutions insured by the FDIC.

Legal authorization and confidentiality: The Regulation F recordkeeping requirements are authorized by section 23 of the Federal Reserve Act, as added by section 308 of the Federal Deposit Insurance Corporation Improvement Act of 1991,[2] which requires the Board to prescribe standards to limit risks posed by exposure of insured depository institutions to other depository institutions. The Regulation F recordkeeping requirements are mandatory.

The Board does not collect any information under Regulation F, so no issue of confidentially normally arises. However, in the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the Freedom of Information Act (FOIA), which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process.[3] Additionally, to the extent that such information obtained by the Board constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the financial institution, the financial institution may request confidential treatment pursuant to exemption 4 of FOIA.[4]

Board of Governors of the Federal Reserve System, January 28, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–02202 Filed 2–2–21; 8:45 am]

BILLING CODE 6210–01–P

[1] Correspondent means a U.S. depository institution or a foreign bank to which a bank has exposure, but does not include a commonly controlled correspondent. 12 CFR 206.2(c).

[2] 12 U.S.C. 371b–2.

[3] 5 U.S.C. 552(b)(8).

[4] 5 U.S.C. 552(b)(4).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Disclosure Requirements Associated with CFPB's Regulation DD (FR DD; OMB No. 7100–0271).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Disclosure Requirements Associated with CFPB's Regulation DD.

Agency form number: FR DD.

OMB control number: 7100–0271.

Frequency: Monthly.

Respondents: Except those that are supervised by the Consumer Financial Protection Bureau (CFPB), state member banks, branches of foreign banks (other than federal branches and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 of the Federal Reserve Act (12 U.S.C. 601–604a). The CFPB supervises, among other institutions, insured depository institutions with over $10 billion in assets and their affiliates (including affiliates that are themselves depository institutions regardless of asset size and subsidiaries of such affiliates).

Estimated number of respondents: Account disclosures, Change in terms notice, Notices prior to maturity, Periodic statement disclosure and additional disclosure requirements for overdraft services, and Advertising and additional disclosure requirements for overdraft services, 835.

Estimated average hours per response: Account disclosures, 1 hour; Change in terms notice, 1.5 hours; Notices prior to maturity, 1.5 hours; Periodic statement disclosure and additional disclosure requirements for overdraft services, 8 hours; and Advertising and additional disclosure requirements for overdraft services, 0.5 hour.

Estimated annual burden hours: Account disclosures, 10,020 hours; Change in terms notice, 15,030 hours; Notices prior to maturity, 15,030 hours; Periodic statement disclosure and additional disclosure requirements for overdraft services, 80,160 hours; and Advertising and additional disclosure requirements for overdraft services, 5,010 hours.

General description of report: The Truth in Savings Act (TISA) was contained in the Federal Deposit Insurance Corporation Improvement Act of 1991. The purpose of TISA and its implementing regulation is to assist consumers in comparing deposit accounts offered by institutions, principally through the disclosure of fees, the annual percentage yield (APY), and other account terms. TISA requires depository institutions to disclose key terms for deposit accounts at account opening, upon request, when certain changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. TISA does not provide exemptions from compliance for small institutions.

Legal authorization and confidentiality: Section 269 of TISA specifically authorizes the CFPB ''to prescribe regulations'' to carry out the purposes and provisions of the Act, as well as to adopt model forms and clauses for common disclosures to facilitate compliance. Regulation DD implements this statutory provision. The Board's imposition of the disclosure requirements on Board-supervised institutions is authorized by Section 270 of TISA.

Current actions: On October 14, 2020, the Board published an initial notice in the **Federal Register** (85 FR 65049) requesting public comment for 60 days on the extension, without revision, of the FR DD. The comment period for this notice expired on December 14, 2020. The Board received one comment, however, this comment was outside the scope of FR DD. The Board will adopt the extension, without revision, of the FR DD as originally proposed.

Board of Governors of the Federal Reserve System, January 28, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–02201 Filed 2–2–21; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Senior Loan Officer Opinion Survey on Bank Lending Practices (FR 2018; OMB No. 7100–0058).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.*

These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Senior Loan Officer Opinion Survey on Bank Lending Practices.

Agency form number: FR 2018.

OMB control number: 7100–0058.

Frequency: Up to six times a year.

Respondents: Domestically chartered large commercial banks and large U.S. branches and agencies of foreign banks.

Estimated number of respondents: Main surveys, 104; Special surveys, 104.

Estimated average hours per response: 2.

Estimated annual burden hours: Main surveys, 832; Special surveys, 416.

General description of report: The FR 2018 is conducted with a senior loan officer at each respondent bank, generally through electronic submission, up to six times a year. The purpose of the survey is to provide qualitative and limited quantitative information on credit availability and demand, as well as evolving developments and lending practices in the U.S. loan markets. A portion of each survey typically covers special topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or other financial entities) should the need arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets.

Legal authorization and confidentiality: Section 2A of the Federal Reserve Act (FRA) requires the Federal Reserve Board and the Federal Open Market Committee (FOMC) to maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates [1] and section 12A of the FRA requires the FOMC to implement regulations relating to the open market operations conducted by Federal Reserve Banks ''with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.'' [2] Because the Board and the FOMC use the information obtained from the FR 2018 to fulfill these obligations, these statutory provisions provide the legal authorization for the collection of information on the FR 2018. In addition, section 11 of the FRA, which permits the Board to examine at its discretion the accounts, books, and affairs of each Federal Reserve Bank and each member bank and to require such statements and reports as it may deem necessary, authorizes the collection of information from depository institutions [3] and section 7 of the International Banking Act authorizes the collection of information from branches and agencies of foreign banks.[4] Survey submissions under the FR 2018 are voluntary.

Although the specific questions to be asked on each survey have not yet been formulated, the questions are designed to obtain information that is customarily and actually treated as private by the institution. Thus, the individual survey responses from each respondent may be held confidential under exemption (4) of the Freedom of Information Act.[5] However, certain data from the survey is publically reported in aggregate form, and the information in aggregate form is made publicly available and not considered confidential.

Current actions: On October 14, 2020, the Board published a notice in the **Federal Register** (85 FR 65045) requesting public comment for 60 days on the extension, without revision, of the FR 2018. The comment period for this notice expired on December 14, 2020. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, January 28, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–02203 Filed 2–2–21; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 225a.

[2] 12 U.S.C. 263.

[3] 12 U.S.C. 248(a).

[4] 12 U.S.C. 3105(c)(2).

[5] 5 U.S.C. 552(b)(4).

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than February 18, 2021.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23219. Comments can also be sent electronically to or *Comments.applications@rich.frb.org:*

1. *New Republic Partners, Inc., Charlotte, North Carolina;* through a newly-formed wholly-owned subsidiary, New Republic Securities, LLC, Charlotte, North Carolina, to engage de novo in financial and investment advisory activities and agency transactional services for customer investments pursuant to sections 225.28(b)(6) and (7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–02230 Filed 2–2–21; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks (FR 2502q; OMB No. 7100–0079).

DATES: Comments must be submitted on or before April 5, 2021.

ADDRESSES: You may submit comments, identified by *FR 2502q,* by any of the following methods:

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

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at *https://www.reginfo.gov/public/do/PRAMain,* if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

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

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks.

Agency form number: FR 2502q.

OMB control number: 7100–0079.

Frequency: Quarterly.

Respondents: U.S. commercial banks, bank holding companies (including financial holding companies), and Edge Act and agreement corporations.

Estimated number of respondents: 23.

Estimated average hours per response: 1.

Estimated annual burden hours: 92.

General description of report: U.S. commercial banks, bank holding companies, and Edge Act and agreement corporations are required to file the FR 2502q reporting form, on a quarterly basis, for their large branches (those that have assets of $2 billion or more) and banking subsidiaries (those that have assets of $2 billion or more and deposits of $10 million or more) that are located in the United Kingdom or the Caribbean. The Board has an interest in knowing the amounts of the claims and liabilities of U.S.-chartered banks with respect to residents of individual countries.

Legal authorization and confidentiality: The Board is authorized to collect the information in FR 2502q from (1) bank holding companies pursuant to section 5 of the Bank Holding Company Act,[1] which authorizes the Board to require a bank holding company and any subsidiary to submit reports; (2) Edge Act and agreement corporations pursuant to sections 25(4) and 25A(17) of the Federal Reserve Act (FRA),[2] which authorize the Board to require Edge and agreement corporations to make reports to the Board; and (3) depository institutions pursuant to sections 11(a)(1) and (2) of the FRA,[3] which authorize the Board to require reports from each member bank as it may deem necessary and to require reports of liabilities and assets from insured depository institutions to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates.

The FR 2502q report is mandatory. To the extent that the information from this

[1] 12 U.S.C. 1844(c).

[2] 12 U.S.C. 602 and 12 U.S.C. 625.

[3] 12 U.S.C. 248(a)(1) and (2).

collection obtained by the Board constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the financial institution, the financial institution may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act.[4]

Board of Governors of the Federal Reserve System, January 28, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–02204 Filed 2–2–21; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Senior Financial Officer Surveys (FR 2023; OMB No. 7100–0223).

DATES: Comments must be submitted on or before April 5, 2021.

ADDRESSES: You may submit comments, identified by FR 2023, by any of the following methods:

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

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at *https://www.reginfo.gov/public/do/PRAMain,* if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

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

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Senior Financial Officer Surveys.

Agency form number: FR 2023.

OMB control number: 7100–0223.

Frequency: Up to four times a year.

Respondents: Domestically chartered large depository institutions and foreign banking organizations.

Estimated number of respondents: 80.

Estimated average hours per response: 3.

Estimated annual burden hours: 960.

General description of report: The Board uses the surveys in this collection to gather qualitative and limited quantitative information about liability management, the provision of financial services, and the functioning of key financial markets. Responses are obtained from a senior officer at each participating institution, usually through an electronic submission. Although a survey may not be collected in a given year, the Board may conduct up to four surveys per year when informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest.

Legal authorization and confidentiality: The FR 2023 is authorized by sections 2A, 12A, and 11 of the Federal Reserve Act (''FRA'').[1] Section 2A of the FRA requires that the Board and the Federal Open Market Committee (''FOMC'') maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively

[4] 5 U.S.C. 552(b)(4).

[1] 31 U.S.C. 5364(a).

the goals of maximum employment, stable prices, and moderate long-term interest rates.[2] Section 12A of the FRA further requires the FOMC to implement regulations relating to the open market operations conducted by Federal Reserve Banks ''with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.'' [3] Section 11 of the FRA authorizes the Board to require reports from each member bank as it may deem necessary and authorizes the Board to prescribe reports of liabilities and assets from insured depository institutions to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates.[4] The Board and FOMC use the information obtained through the FR 2023 to discharge these responsibilities.

Survey submissions under the FR 2023 are voluntary.

The questions asked on each survey will vary. The Board's ability to keep confidential responses to the FR 2023 must therefore be determined on a case-by-case basis. Much of the information collected is likely to constitute nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, so may be kept confidential by the Board pursuant to exemption 4 of the Freedom of Information Act (''FOIA'').[5] Some survey responses may also contain information contained in or related to an examination of a financial institution, which may be kept confidential under exemption 8 of the FOIA.[6] Responses to the FR 2023 are tabulated and summarized at the Board and the Federal Reserve Bank of New York. This aggregate information is not considered confidential, and a report containing summary data is published on the Board's public website.[7]

Board of Governors of the Federal Reserve System, January 28, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–02199 Filed 2–2–21; 8:45 am]

BILLING CODE 6210–01–P

[2] 12 U.S.C. 225a.

[3] 12 U.S.C. 263.

[4] 12 U.S.C. 248(a).

[5] 5 U.S.C. 552(b)(4).

[6] 5 U.S.C. 552(b)(8).

[7] Survey reports are available at *www.federalreserve.gov/data/sfos/sfos.htm.*

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than February 18, 2021.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Michael Stephens Leonard Second Amended and Restated Revocable Trust, Mike Leonard as trustee, the Amended and Restated Ginger Batson Trust, Ginger Batson as trustee, Carsen Lamont, Courtney Michelle Lamont, and a minor child, all of Muskogee, Oklahoma; and The Amy N. Bennett Revocable Trust Agreement, Amy Bennett, individually and as trustee, and minor children, all of Bixby, Oklahoma;* to form the Leonard Family Group, a group acting in concert to acquire voting shares of Stigler Bancorporation, Inc., and thereby indirectly acquire voting shares of The First National Bank of Stigler, both of Stigler, Oklahoma.

Board of Governors of the Federal Reserve System, January 29, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–02237 Filed 2–2–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Survey of Consumer Finances (FR 3059; OMB 7100–0287).

DATES: Comments must be submitted on or before April 5, 2021.

ADDRESSES: You may submit comments, identified by FR 3059, by any of the following methods:

• *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be available at *https://www.reginfo.gov/public/do/PRAMain,* if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

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

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Survey of Consumer Finances.

Agency form number: FR 3059.

OMB control number: 7100–0287.

Frequency: Triennial.

Respondents: U.S. families.

Estimated number of respondents: Pretest, 150; Main survey, 7,000.

Estimated average hours per response: Pretest, 100 minutes; Main survey, 100 minutes.

Estimated annual burden hours: Pretest, 250 hours; Main survey, 11,667 hours.

General description of report: This triennial survey is the only source of representative information on the structure of U.S. families' finances. The survey would collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. families. Because the ownership of some assets is relatively concentrated in a small number of families, the survey would make a special effort to ensure proper representation of such assets by systematically oversampling wealthier families.

Legal authorization and confidentiality: Section 2A of the Federal Reserve Act (FRA) requires that the Board and the Federal Open Market Committee (FOMC) maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.[1] In addition, under section 12A of the FRA, the FOMC is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks ''with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.''[2] The Board and the FOMC use the information obtained from the FR 3059 to help fulfill these obligations. The FR 3059 is a voluntary survey.

Consultation outside the agency: The final survey questionnaire would be developed jointly by the Board and the contractor. The contractor would conduct the computer based interviews for this survey. The data to support the part of the survey sample selected by the Board would be provided by the Statistics of Income Division (SOI) of the Internal Revenue Service under a contract that allows this use of the data as well as other more limited uses of the data for statistical adjustments to the final data and related purposes. As in past surveys, the sample selection and survey administration would be managed so that the Board would not be given any names of survey participants; SOI would not be given data to link survey responses with tax records; and the contractor would not be given income data derived from the tax returns.

It is expected that the data collected would be published in summary form in the *Federal Reserve Bulletin* in 2023. A version of the microdata, which would be altered to protect the identity of individual respondents, would be made available to the public through the Board's public website. None of the pretest data would be released to the public. The information collected on the FR 3059 that identifies the individual respondents may be exempt from disclosure under exemption 6 of the Freedom of Information Act, which protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.[3]

Board of Governors of the Federal Reserve System, January 28, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–02200 Filed 2–2–21; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 225a.

[2] 12 U.S.C. 263.

[3] 5 U.S.C. 552(b)(6).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076; Docket No. 2021–0053; Sequence No. 2]

Information Collection; Novation and Change-of-Name Agreements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on

a revision and an extension concerning alternatives to Government-unique standards. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through October 31, 2021. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by April 5, 2021.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0153, Alternatives to Government-unique standards. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Jennifer Hawes, Procurement Analyst, at telephone 202–969–7386, or *jennifer.hawes@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0076, Novation and Change-of-Name Agreements.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the following requirements in Federal Acquisition Regulation subpart 42.12:

- *42.1203(a), Written Request.* If a contractor wishes the Government to recognize a successor in interest to its contracts or a name change, the contractor must submit a written request to the responsible contracting officer. The request is used to by the contracting officer to determine what additional supporting documentation should be submitted by the contractor and to determine what other contract administration offices should be notified of the contractor's request.
- *42.1204(e) and (f), Novation Agreement.* Pursuant to 42.1203(b)(1), upon request from the contracting officer, the contractor shall submit three signed copies of the proposed novation agreement, plus copies of the supporting documentation listed at 42.1204(e) and (f), as applicable. The documentation is used by the contracting officer to evaluate and, if appropriate, execute a proposed agreement for recognizing a third party as a successor in interest.
- *42.1205(a), Change-of-Name Agreement.* Pursuant to 42.1203(b)(1), upon request from the contracting officer, the contractor shall submit three signed copies of the proposed change-of-name agreement, plus copies of the supporting documentation listed at 42.1205(a), as applicable. The documentation is used by the contracting officer to evaluate and, if appropriate, execute a proposed agreement for recognizing a contractor's name change.

C. Annual Burden

Respondents: 1,515.

Total Annual Responses: 1,515.

Total Burden Hours: 2,701.

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. 9000–0076, Novation and Change-of-Name Agreements.

William F. Clark,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–02241 Filed 2–2–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0064; Docket No. 2020–0053; Sequence No. 17]

Submission for OMB Review; Organization and Direction of the Work

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 organization and direction of the work.

DATES: Submit comments on or before March 5, 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 No. 9000–0064, Organization and Direction of the Work. 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)

9000–0064, Organization and Direction of the Work.

B. Needs and Uses

This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirement:

- *52.236–19, Organization and Direction of the Work.* This clause requires contractors, under cost-reimbursement construction contracts, to submit to the contracting officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under the contract, and their respective duties. The contractor must keep the data furnished current by supplementing it as additional information becomes available.

The contracting officer uses the information to ensure the work is performed by qualified personnel at a reasonable cost to the Government.

C. Annual Burden

Respondents: 34.

Total Annual Responses: 34.

Total Burden Hours: 26.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 85 FR 74723, on November 23, 2020. No comments were received.

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. 9000–0064, Organization and Direction of the Work.

William F. Clark,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–02242 Filed 2–2–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0163; Docket No. 2021–0053; Sequence No. 2]

Information Collection; Small Business Size Rerepresentation

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning small business size rerepresentation. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through September 30, 2021. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by April 5, 2021.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *http://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0163, Small Business Size Rerepresentation. 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.

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)

9000–0163, Small Business Size Rerepresentation.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

52.219–28, Post-Award Small Business Program Rerepresentation. This clause requires contractors who originally represented themselves as a small business for a contract award to rerepresent their size and socioeconomic status at the prime contract level by updating their representations in the Representations and Certifications section of the System for Award Management (SAM). Contractors are also required to notify the contracting officer by email, or otherwise in writing, that the rerepresentations have been made, and provide the date on which they were made.

Small business contractors are required to rerepresent their size and socioeconomic status upon occurrence of any of the following:

- Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include FAR clause 52.219–28, if the novation agreement was executed prior to inclusion of this clause in the contract.
- Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include FAR clause 52.219–28, if the merger or acquisition occurred prior to inclusion of this clause in the contract.
- For long-term contracts—

Within 60 to 120 days prior to the end of the fifth year of the contract; and

Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

- When contracting officers explicitly require it for an order issued under a multiple-award contract.

The collected information is used by the Small Business Administration, Congress, Federal agencies and the general public for various reasons such as determining if agencies are meeting statutory goals, set-aside determinations, and market research.

C. Annual Burden

Respondents: 2647.

Total Annual Responses: 4029.

Total Burden Hours: 2014.5.

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. 9000–0163, Small Business Size Rerepresentation.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–02239 Filed 2–2–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID–19

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Agency Order.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the extension of an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID–19.

DATES: This Order is effective January 31, 2021 through March 31, 2021.

FOR FURTHER INFORMATION CONTACT: Tiffany Brown, Acting Deputy Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–10, Atlanta, GA 30329. Phone: 404–639–7000. Email: *cdcregulations@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This Order extends the original temporary eviction moratorium Order published on September 4, 2020 and extended by the Consolidated Appropriations Act, 2021 and further extends the Order with modifications through March 31, 2021. The conditions that originally necessitated the original Order continue to exist and, in many jurisdictions, have significantly worsened. With the convergence of COVID–19, seasonal influenza, household crowding and transmission, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, extending the temporary halt on evictions, subject to further extension, modification, or rescission, is appropriate. Additionally, the Order now applies to American Samoa. At the time of publication of the September 4, 2020 Order, no cases had been reported in American Samoa. Cases have now been reported there.

A copy of the Order is provided below. A copy of the signed Order and the Declaration can be found at: *https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html*

Centers for Disease Control and Prevention Department of Health and Human Services

Order Under Section 361 of the Public Health Service AcT (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2

Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid–19

Summary

Subject to the limitations under ''Applicability,'' a landlord, owner of a residential property, or other person [1] with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.

Definitions

''*Available government assistance*'' means any governmental rental or housing payment benefits available to the individual or any household member.

''*Available housing*'' means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, state, or local occupancy standards and that would not result in an overall increase of housing cost to such individual.

''*Covered person*'' [2] means any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that: (1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than $99,000 in annual income for Calendar Year 2021 (or no more than $198,000 if filing a joint tax return),[3] (ii) was not required to report any income in 2020 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary [4] out-of-pocket medical expenses;

(4) the individual is using best efforts to make timely partial payments that are

[1] For purposes of this Order, ''person'' includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

[2] This definition is based on factors that are known to contribute to evictions and thus increase the need for individuals to move into close quarters in new congregate or shared living arrangements or experience homelessness. Individuals who suffer job loss, have limited financial resources, are low income, or have high out-of-pocket medical expenses are more likely to be evicted for nonpayment of rent than others not experiencing these factors. See Desmond, M., Gershenson, C., Who gets evicted? Assessing individual, neighborhood, and network factors, Social Science Research 62 (2017), 366–377, *http://dx.doi.org/10.1016/j.ssresearch.2016.08.017,* (identifying job loss as a possible predictor of eviction because renters who lose their jobs experience not only a sudden loss of income but also the loss of predictable future income). According to one survey, over one quarter (26%) of respondents also identified job loss as the primary cause of homelessness. See 2019 San Francisco Homeless Point-in-Time Count & Survey, page 22, available at: *https://hsh.sfgov.org/wp-content/uploads/2020/01/2019HIRDReport_SanFrancisco_FinalDraft-1.pdf.*

[3] According to one study, the national two-bedroom housing wage in 2020 was $23.96 per hour (approximately, $49,837 annually), meaning that an hourly wage of $23.96 was needed to afford a modest two bedroom house without spending more than 30% of one's income on rent. The hourly wage needed in Hawaii (the highest cost U.S. State for rent) was $38.76 (approximately $80,621 annually). See National Low-Income Housing Coalition, Out of Reach: The High Cost of Housing 2020, available at: *https://reports.nlihc.org/oor.* As further explained herein, because this Order is intended to serve the critical public health goal of preventing evicted individuals from potentially contributing to the interstate spread of COVID–19 through movement into close quarters in new congregate, shared housing settings, or though homelessness, the higher income thresholds listed here have been determined to better serve this goal.

[4] An extraordinary medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.

as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and

(5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.

''*Evict*'' and ''*Eviction*'' means any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, to remove or cause the removal of a covered person from a residential property. It also does not include foreclosure on a home mortgage.

''*Residential property*'' means any property leased for residential purposes, including any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.

''*State*'' shall have the same definition as under 42 CFR 70.1, meaning ''any of the 50 states, plus the District of Columbia.''

''*U.S. territory*'' shall have the same definition as under 42 CFR 70.1, meaning ''any territory (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.''

Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Mitigating the spread of COVID–19 within congregate or shared living settings, or through unsheltered homelessness;
- Mitigating the further spread of COVID–19 from one state or territory into any other state or territory; and
- Supporting response efforts to COVID–19 at the Federal, state, local, territorial, and tribal levels.

Background

There is currently a pandemic of a respiratory disease (''COVID–19'') caused by a novel coronavirus (SARS–COV–2) that has now spread globally, including cases reported in all fifty states within the United States plus the District of Columbia and U.S. territories. As of January 21, 2021, there have been over 96 million cases of COVID–19 globally, resulting in over 2,000,000 deaths. Over 24,400,000 cases have been identified in the United States, with new cases reported daily, and over 400,000 deaths due to the disease. On January 8, 2021, over 300,000 COVID–19 cases in the U.S. were reported to CDC, representing a peak approximately 7 times the highest daily cases in April, 2020 and approximately 4 times the highest daily cases in July, 2020.

The virus that causes COVID–19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet), mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. Some people without symptoms may be able to spread the virus. Among adults, the risk for severe illness from COVID–19 increases with age, with older adults at highest risk. Severe illness means that persons with COVID–19 may require hospitalization, intensive care, or a ventilator to help them breathe, and may be fatal. People of any age with certain underlying medical conditions, such as cancer, an immunocompromised state, obesity, serious heart conditions, and diabetes, are at increased risk for severe illness from COVID–19.[5]

COVID–19 presents a historic threat to public health, and COVID–19 cases have been detected in every county in the continental United States.[6] Through December 2020 and January 2021, the number of deaths per day from COVID–19 consistently exceeded any other cause.[7] Additionally, in recent months, new variants of SARS-CoV–2 have emerged globally, some of which have been associated with increased transmissibility.[8] To respond to this public health threat, the Federal, state, and local governments have taken unprecedented or exceedingly rare actions, including border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria. Despite these significant efforts, COVID–19 continues to spread and further action is needed.

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID–19 due to an underlying medical condition. They also allow state and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID–19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID–19.

On September 4, 2020, the CDC Director issued an Order temporarily halting evictions in the United States for the reasons described therein. That Order was set to expire on December 31, 2020, subject to further extension, modification, or rescission. Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 extended the Order until January 31, 2021. This Order further extends and modifies the prior Orders until March 31, 2021 for the reasons described herein. Much of the content of the September 4, 2020 Order has been incorporated into this Order. To the extent any provision of this Order conflicts with prior Orders, this Order is controlling.

In addition to extending the effective period of the September 4, 2020 Order, as further extended by the Consolidated Appropriations Act, 2021, this Order includes newly available modeling projections and observational data from COVID–19 incidence comparisons across states that have implemented and lifted eviction moratoria, which clearly demonstrate the need for this Order. The Order now also applies to American Samoa because cases of COVID–19 have now been reported there.

Applicability

This Order does not apply in any state, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order. In accordance with 42 U.S.C. 264(e), this Order does not preclude state, local, territorial, and tribal authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.

This Order is a temporary eviction moratorium to prevent the further spread of COVID–19. This Order does not relieve any individual of any obligation to pay rent, make a housing

[5] CDC, People with Certain Medical Conditions, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html* (accessed August 26, 2020).

[6] USAFacts. *https://usafacts.org/visualizations/coronavirus-covid-19-spread-map/.*

[7] Woolf SH, Chapman DA, Lee JH. COVID–19 as the Leading Cause of Death in the United States. JAMA. 2021;325(2):123–124. doi:10.1001/jama.2020.24865

[8] Emerging SARS-CoV–2 Variants. *https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html.*

payment, or comply with any other obligation that the individual may have under a tenancy, lease, or similar contract. Nothing in this Order precludes the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract. Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; [9] (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

This Order now applies to American Samoa. At the time of publication of the September 4, 2020 Order, no cases had been reported in American Samoa. Cases have now been reported there.[10]

Eviction and Risk of COVID–19 Transmission

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID–19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding.[11] Studies show that COVID–19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an index case of COVID–19 than other close contacts.[12]

Preliminary modeling projections and observational data from COVID–19 incidence comparisons across states that implemented and lifted eviction moratoria indicate that evictions substantially contribute to COVID–19 transmission. In mathematical models where eviction led exclusively to sharing housing with friends or family, lifting eviction moratoria led to a 40% increased risk of contracting COVID–19 among people who were evicted and those with whom they shared housing after eviction (pre-peer review).[13] Compared to a scenario where no evictions occurred, the models also predicted a 5–50% increased risk of infection even for those who did not share housing as a result of increased overall transmission. The authors estimated that anywhere from 1,000 to 100,000 excess cases per million population could be attributable to evictions depending on the eviction and infection rates.[14] An analysis of observational data from state-based eviction moratoria in 43 states and the District of Columbia showed significant increases in COVID–19 incidence and mortality approximately 2–3 months after eviction moratoria were lifted (pre-peer review).[15] Specifically, the authors compared the COVID–19 incidence and mortality rates in states that lifted their moratoria with the rates in states that maintained their moratoria. In these models, the authors controlled for time-varying indicators of each state's test count as well as major public-health interventions including lifting stay-at-home orders, school closures, and mask mandates. After adjusting for these other changes, they found that the incidence of COVID–19 in states that lifted their moratoria was 1.6 times that of states that did not at 10 weeks post-lifting (95% CI 1.0, 2.3), a ratio that grew to 2.1 at ≥16 weeks (CI 1.1, 3.9). Similarly, they found that mortality in states that lifted their moratoria was 1.6 times that of states that did not at 7 weeks post-lifting (CI 1.2, 2.3), a ratio that grew to 5.4 at ≥16 weeks (CI 3.1, 9.3). Although there may be additional factors that the authors were unable to adjust for, the authors estimated that, nationally, over 433,000 cases of COVID–19 and over 10,000 deaths could be attributed to lifting state moratoria.[16]

Shared housing is not limited to friends and family. It includes a broad range of settings, including transitional housing, and domestic violence and abuse shelters. Special considerations exist for such housing because of the challenges of maintaining social distance. Residents often gather closely or use shared equipment, such as kitchen appliances, laundry facilities, stairwells, and elevators. Residents may have unique needs, such as disabilities, cognitive decline, or no access to technology, and thus may find it more difficult to take actions to protect themselves from COVID–19. CDC recommends that shelters provide new residents with a clean mask, keep them isolated from others, screen for symptoms at entry, or arrange for medical evaluations as needed depending on symptoms.[17] Accordingly, an influx of new residents at facilities that offer support services could potentially overwhelm staff and, if recommendations are not followed, lead to exposures.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) to aid individuals and businesses adversely affected by COVID–19. Section 4024 of the CARES Act provided a 120-day moratorium on eviction filings as well as other protections for tenants in certain rental properties with Federal assistance or federally related financing. These protections helped alleviate the public health consequences of tenant displacement during the COVID–19 pandemic. The CARES Act eviction moratorium expired on July 24, 2020.[18] The protections in the CARES Act supplemented temporary eviction moratoria and rent freezes implemented by governors and local officials using emergency powers.

Researchers estimated that this temporary Federal moratorium provided relief to a material portion of the nation's roughly 43 million renters.[19]

[9] Individuals who might have COVID–19 are advised to stay home except to get medical care. Accordingly, individuals who might have COVID–19 and take reasonable precautions to not spread the disease should not be evicted on the ground that they may pose a health or safety threat to other residents. See What to Do if You are Sick, available at *https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html.*

[10] *https://www.who.int/americansamoa.*

[11] United States Census Bureau. American Housing Survey, 2017. *https://www.census.gov/programs-surveys/ahs.html.*

[12] Bi Q, Wu Y, Mei S, et al. Epidemiology and transmission of COVID–19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study. Lancet Infect Dis 2020, *https://doi.org/10.1016/S1473-3099(20)30287-5.*

[13] Sheen J, Nande A, Walters EL, Adlam B, Gheorghe A, Shinnick J, Tejeda MF, Greenlee A, Schneider D, Hill AL, Levy MZ. The effect of eviction moratoriums on the transmission of SARS-CoV–2. medRxiv [Preprint]. 2020 Nov 1:2020.10.27.20220897. doi: 10.1101/2020.10.27.20220897. PMID: 33140067; PMCID: PMC7605580.

[14] *Id.*

[15] Leifheit, Kathryn M. and Linton, Sabriya L. and Raifman, Julia and Schwartz, Gabriel and Benfer, Emily and Zimmerman, Frederick J and Pollack, Craig, Expiring Eviction Moratoriums and COVID–19 Incidence and Mortality (November 30, 2020). Available at SSRN: *https://ssrn.com/abstract=3739576* or *http://dx.doi.org/10.2139/ssrn.3739576.*

[16] *Id.*

[17] See CDC COVID–19 Guidance for Shared or Congregate Housing, available at: *https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html.*

[18] Because evictions generally require 30-days' notice, the effects of housing displacement due to the expiration of the CARES act are not expected to manifest until August 27, 2020.

[19] See Congressional Research Service, CARES Act Eviction Moratorium, (April 7, 2020) available at: *https://crsreports.congress.gov/product/pdf/IN/IN11320.*

Approximately 12.3 million rental units have federally backed financing, representing 28% of renters. Other data show more than 2 million housing vouchers along with approximately 2 million other federally assisted rental units.[20]

The CARES Act moratorium, however, did not reach all renters. Neither does the more recently enacted Emergency Rental Assistance Program under the Consolidated Appropriations Act, 2021, as administered by the Department of Treasury.[21] Many renters who fell outside the scope of the moratorium were protected under state and local moratoria. In the absence of state and local protections, as many as 30–40 million people in America could be at risk of eviction.[22] A wave of evictions on that scale would be unprecedented in modern times.[23] A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus contributing to the spread of COVID–19.

The statistics on interstate moves show that mass evictions would likely increase the interstate spread of COVID–19. Over 35 million Americans, representing approximately 10% of the U.S. population, move each year.[24] Approximately 15% of moves are interstate.[25]

Eviction, Homelessness, and Risk of Severe Disease From COVID–19

Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID–19 than the general population.[26] In Seattle-King County, 5–15% of people experiencing homelessness between 2018 and 2020 cited eviction as the primary reason for becoming homeless.[27] Additionally, some individuals and families who are evicted may originally stay with family or friends, but subsequently seek homeless services. Among people who entered shelters throughout the United States in 2017, 27% were staying with family or friends beforehand.[28]

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order to adhere to public health recommendations to prevent COVID–19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

Extensive outbreaks of COVID–19 have been identified in homeless shelters.[29] In Seattle, Washington, a network of three related homeless shelters experienced an outbreak that led to 43 cases among residents and staff members.[30] In Boston, Massachusetts, universal COVID–19 testing at a single shelter revealed 147 cases, representing 36% of shelter residents.[31] COVID–19 testing in a single shelter in San Francisco led to the identification of 101 cases (67% of those tested).[32] Throughout the United States, among 208 shelters reporting universal diagnostic testing data, 9% of shelter clients have tested positive.[33]

CDC guidance recommends increasing physical distance between beds in homeless shelters.[34] To adhere to this guidance, shelters have limited the number of people served throughout the United States. In many places, considerably fewer beds are available to individuals who become homeless. Shelters that do not adhere to the guidance, and operate at ordinary or increased occupancy, are at greater risk for the types of outbreaks described above. The challenge of mitigating disease transmission in homeless shelters has been compounded because some organizations have chosen to stop or limit volunteer access and participation.

In the context of the current pandemic, large increases in evictions resulting in homelessness could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID–19. The other is if homeless shelters continue to limit new admissions, leading to increases in unsheltered homelessness. Neither consequence is in the interest of the public health.

Recently published data suggest that those experiencing unsheltered homelessness may have a lower risk of contracting COVID–19 compared to those staying in shelters.[35] Data are not yet available to evaluate the risk of COVID–19 among people who are staying unsheltered compared to the general population. However, increases in unsheltered homelessness may lead to further strains on the healthcare system, impacting the availability of COVID–19 care. People experiencing homelessness have been estimated to use the emergency department almost 5 times the rate of the general population,[36] and those who are unsheltered are estimated to use the emergency department twice as often as

[20] See HUD, A Picture of Subsidized Households General Description of the Data and Bibliography, available at: *https://www.huduser.gov/portal/datasets/assthsg/statedata98/descript.html.*

[21] *https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program.*

[22] See Emily Benfer, et al., The COVID–19 Eviction Crisis: An Estimated 30–40 Million People in America are at Risk, available at: *https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/.*

[23] As a baseline, approximately 900,000 renters are evicted every year in the United States. Princeton University Eviction Lab. National Estimates: Eviction in America. *https://evictionlab.org/national-estimates/.*

[24] See U.S. Census Bureau, CPS Historical Migration/Geographic Mobility Tables, available at: *https://www.census.gov/data/tables/time-series/demo/geographic-mobility/historic.html.*

[25] *Id.*

[26] See CDC, Coronavirus Disease 2019 (COVID–19), People Who Are at Increased Risk for Severe Illness, available at *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html* (accessed August 26, 2020).

[27] Seattle-King County. Point in Time Count. *https://regionalhomelesssystem.org/wp-content/uploads/2020/07/Count-Us-In-2020-Final_7.29.2020.pdf.*

[28] United States Department of Housing and Urban Development. The 2017 Annual Homeless Assessment Report (AHAR) to Congress: Part 2. Available at: *https://files.hudexchange.info/resources/documents/2017-AHAR-Part-2.pdf.*

[29] Mosites E, et al, Assessment of SARS-CoV–2 Infection Prevalence in Homeless Shelters—Four U.S. Cities, March 27-April 15, 2020. MMWR 2020 May 1;69(17):521–522.

[30] Tobolowsky FA, et al. COVID–19 Outbreak Among Three Affiliated Homeless Service Sites—King County, Washington, 2020. MMWR 2020 May 1;69(17):523–526.

[31] Baggett TP, Keyes H, Sporn N, Gaeta JM. Prevalence of SARS-CoV–2 Infection in Residents of a Large Homeless Shelter in Boston. JAMA. 2020 Apr 27;323(21):2191–2. Online ahead of print.

[32] Imbert E, et al. Coronavirus Disease 2019 (COVID–19) Outbreak in a San Francisco Homeless Shelter. Clin Infect Dis. 2020 Aug 3.

[33] National Health Care for the Homeless Council and Centers for Disease Control and Prevention. Universal Testing Data Dashboard. Available at: *https://nhchc.org/cdc-covid-dashboard/.*

[34] Centers for Disease Control and Prevention. Interim Guidance for Homeless Service Providers to Plan and Respond to COVID–19. *https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html.*

[35] Yoon JC, Montgomery MP, Buff AM, Boyd AT, Jamison C, Hernandez A, Schmit K, Shah S, Ajoku S, Holland DP, Prieto J, Smith S, Swancutt MA, Turner K, Andrews T, Flowers K, Wells A, Marchman C, Laney E, Bixler D, Cavanaugh S, Flowers N, Gaffga N, Ko JY, Paulin HN, Weng MK, Mosites E, Morris SB. COVID–19 Prevalence among People Experiencing Homelessness and Homelessness Service Staff during Early Community Transmission in Atlanta, Georgia, April-May 2020. Clin Infect Dis. 2020 Sep 8:ciaa1340. doi: 10.1093/cid/ciaa1340. Epub ahead of print. PMID: 32898272; PMCID: PMC7499502.

[36] Amato S, Nobay F, Amato DP, Abar B, Adler D. Sick and unsheltered: Homelessness as a major risk factor for emergency care utilization. Am J Emerg Med. 2019 Mar;37(3):415–420. doi: 10.1016/j.ajem.2018.06.001. Epub 2018 Jun 2. PMID: 29891125.

those who are sheltered.[37] In the context of the pandemic, increased emergency department use is untenable given the existing strains on the healthcare system.[38]

Additionally, research suggests that the population of persons who would be evicted and become homeless would include many who are predisposed to developing severe disease from COVID–19. Five studies have shown an association between eviction and hypertension, which has been associated with more severe outcomes from COVID–19.[39] Also, people experiencing homelessness often have underlying conditions that increase their risk of severe outcomes of COVID–19.[40] Among patients with COVID–19, homelessness has been associated with increased likelihood of hospitalization.[41]

These public health risks may increase seasonally. Each year, as winter approaches and the temperature drops, many persons experiencing homelessness move into shelters to escape the cold and the occupancy of shelters increases.[42] At the same time, there is evidence to suggest that the homeless are more susceptible to respiratory tract infections,[43] which may include seasonal influenza. While there are differences in the epidemiology of COVID–19 and seasonal influenza, the potential co-circulation of viruses during periods of increased occupancy in shelters could increase the risk to occupants in those shelters.

In short, evictions threaten to increase the spread of COVID–19 as they force people to move, often into close quarters in new shared housing settings with friends or family, or congregate settings such as homeless shelters. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase.

Findings and Action

For the reasons described herein, I am extending and modifying the September 4, 2020 Order, as further extended by Section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021. I have determined that extending the temporary halt in evictions in this Order constitutes a reasonably necessary measure under 42 CFR 70.2 to prevent the further spread of COVID–19 throughout the United States. I have further determined that measures by states, localities, or territories that do not meet or exceed these minimum protections are insufficient to prevent the interstate spread of COVID–19.[44]

Based on the convergence of COVID–19, seasonal influenza, household crowding and transmission, and the increased risk of individuals sheltering in close quarters in congregate settings such as homeless shelters, which may be unable to provide adequate social distancing as populations increase, all of which may be exacerbated as winter continues, I have determined that extending the temporary halt on evictions, subject to further extension, modification, or rescission, is appropriate.

Therefore, under 42 CFR 70.2, subject to the limitations under the ''Applicability'' section, the September 4, 2020 Order is hereby modified and extended through March 31, 2021. Accordingly, a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person from any residential property in any state or U.S. territory in which there are documented cases of COVID–19 that provides a level of public-health protections below the requirements listed in this Order.

This Order is not a rule within the meaning of the Administrative Procedure Act (''APA'') but rather an emergency action taken under the existing authority of 42 CFR 70.2. The purpose of § 70.2 is to enable CDC to take swift steps to prevent contagion.[45]

In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. See 5 U.S.C. 553(b)(3)(B). Considering the public-health emergency caused by COVID–19, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order.

In the September 4, 2020 Order, the previous CDC Director determined that good cause existed because the public health emergency caused by COVID–19 made it impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of the Order. The previous Director also found that a delay in the effective date of the Order would permit the occurrence of evictions—potentially on a mass scale—that would have potentially significant consequences. One such potential consequence would be that evicted individuals would move into close quarters in congregate or shared living settings, including homeless shelters, which would put the individuals at higher risk for COVID–19. Another potential consequence would be if evicted individuals become homeless and unsheltered, and further contribute to the spread of COVID–19. For these reasons, the previous Director concluded that the delay in the effective date of the Order would defeat the purpose of the Order and endanger the public health and, therefore, determined that immediate action was necessary. As a result, the previous Director issued the Order without prior notice and comment and without a delay in the effective date. Because these conditions continue to exist—indeed, have worsened—and because the extension granted in section 502 of Title V, Division N of the Consolidated Appropriations Act, 2021 is set to expire on January 31, 2021, I hereby conclude that immediate action is again necessary without prior notice and comment and without a delay in the effective date.

[37] Raven MC, Tieu L, Lee CT, Ponath C, Guzman D, Kushel M. Emergency Department Use in a Cohort of Older Homeless Adults: Results From the HOPE HOME Study. Acad Emerg Med. 2017 Jan;24(1):63–74. doi: 10.1111/acem.13070. PMID: 27520382; PMCID: PMC5857347.

[38] *https://www.wsj.com/articles/covid-19-surge-strains-hospitals-once-again-11605100312.*

[39] Hugo Vasquez-Vera, et al. The threat of home eviction and its effects on health through the equity lens: A systematic review. Social Science and Medicine. 175 (2017) 199e208.

[40] Fazel S, Geddes JR, Kushel M. The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinical and policy recommendations. Lancet. 2014;384(9953):1529–1540.

[41] Hsu HE, et al. Race/Ethnicity, Underlying Medical Conditions, Homelessness, and Hospitalization Status of Adult Patients with COVID–19 at an Urban Safety-Net Medical Center—Boston, Massachusetts, 2020. MMWR 2020 Jul 10;69(27):864–869. Historically, African Americans and Hispanic Americans are disproportionately represented in evictions compared to other races. They are more likely to experience severe outcomes of COVID–19. *Id.*

[42] See, generally, the Annual Homeless Assessment Report to Congress (2007), available at: *https://www.huduser.gov/Publications/pdf/ahar.pdf* (acknowledging the seasonality of shelter bed use).

[43] Ly TDA, Edouard S, Badiaga S, et al. Epidemiology of respiratory pathogen carriage in the homeless population within two shelters in Marseille, France, 2015–2017: Cross sectional 1-day surveys. Clin Microbiol Infect. 2019; 25(2):249.e1–249.e6.

[44] In the United States, public health measures are implemented at all levels of government, including the federal, state, local, and tribal levels. Publicly-available compilations of pending measures indicate that eviction moratoria and other protections from eviction have expired or are set to expire in many jurisdictions. Eviction Lab, *COVID–19 Housing Policy Scorecard,* available at: *https://evictionlab.org/covid-policy-scorecard/.*

[45] *Chambless Enters., LLC* v. *Redfield,* No. 20–1455, 2020 WL 7588849, (W.D. La. 2020).

The rapidly changing nature of the pandemic requires not only that CDC act swiftly, but also deftly to ensure that its actions are commensurate with the threat. This necessarily involves assessing evolving conditions that inform CDC's determinations.

The conditions that existed on September 4, 2020 have only worsened. As of January 21, 2021, there have been over 24,400,000 cases and over 400,000 deaths. Data collected by Princeton University show that eviction filings are occurring; it is therefore expected that large numbers of evictions would be processed if the Order were to expire. [*https://evictionlab.org/eviction-tracking*]. Without this Order, there is every reason to expect that evictions will increase significantly, resulting in further spread of COVID–19. It is imperative is to act quickly to protect the public health, and it would be impracticable and contrary to the public interest to delay the issuance and effective date of the Order pending notice-and-comment rulemaking.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs (OIRA) has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by federal authorities and cooperating state and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Criminal Penalties

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than $100,000 if the violation does not result in a death, or a fine of no more than $250,000 if the violation results in a death, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than $200,000 per event if the violation does not result in a death or $500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate criminal proceedings as appropriate seeking imposition of these criminal penalties.

Notice to Cooperating State and Local Officials

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid state and local authorities in the enforcement of their quarantine and other health regulations and to accept state and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

Notice of Available Federal Resources

While this Order to prevent eviction is effectuated to protect the public health, the states and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG–CV and ESG–CV funds provided by the CARES Act, all communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

HUD stands at the ready to support American communities take these steps to reduce the spread of COVID–19 and maintain economic prosperity. Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are sufficiently addressed and utilize HUD 's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit *www.hudexchange.info/program-support.* For further information on HUD resources, tools, and guidance available to respond to the COVID–19 pandemic, state and local officials are directed to visit *https://www.hud.gov/coronavirus.* These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund and the Emergency Rental Assistance Program may be used to fund rental assistance programs to prevent eviction. Visit *https://home.treasury.gov/policy-issues/cares/state-and-local-governments* for more information about the Coronavirus Relief Fund and *https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program* for more information about the Emergency Rental Assistance Program..

Effective Date

This Order is effective on January 31, 2021 and will remain in effect, unless extended, modified, or rescinded, through March 31, 2021.

Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Dated: January 29, 2021.

Sherri Berger

Acting Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021–02243 Filed 1–29–21; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Requirement for Persons To Wear Masks While on Conveyances and at Transportation Hubs

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Agency Order.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the U.S. Department of Health and Human Services (HHS), announces an Agency Order requiring persons to wear masks over the mouth and nose when traveling on any conveyance (*e.g.,* airplanes, trains, subways, buses, taxis, ride-shares, ferries, ships, trolleys, and cable cars) into or within the United States. A person must also wear a mask on any conveyance departing from the United States until the conveyance reaches its foreign destination. Additionally, a person must wear a mask while at any transportation hub within the United States (*e.g.,* airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation within the United States). Furthermore, operators of conveyances and transportation hubs must use best efforts to ensure that persons wear masks as required by this Order.

DATES: This Order takes effect at 11:59 p.m. Monday February 1, 2021.

FOR FURTHER INFORMATION CONTACT: Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329. Email: *dgmqpolicyoffice@cdc.gov.*

SUPPLEMENTARY INFORMATION: The virus that causes COVID–19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet) mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths, eyes, or noses of people who are nearby and possibly be inhaled into the lungs. Some people without symptoms also spread the virus. In general, the more closely a person interacts with others and the longer that interaction, the higher the risk of COVID–19 spread.

This Order is issued to preserve human life; maintain a safe and operating transportation system; mitigate the further introduction, transmission, and spread of COVID–19 into the United States and from one state or territory into any other state or territory; and support response efforts to COVID–19 at the Federal, state, local, territorial, and tribal level.

Appropriately worn masks reduce the spread of COVID–19—particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID–19. Masks are most likely to reduce the spread of COVID–19 when they are widely used by people in public settings. Using masks along with other preventive measures, including social distancing, frequent handwashing, and cleaning and disinfecting frequently touched surfaces, is one of the most effective strategies available for reducing COVID–19 transmission.

This Order will remain in effect unless modified or rescinded based on specific public health or other considerations, or until the Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists.

A copy of the Order is provided below and a copy of the signed order can be found at *https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html*

CENTERS FOR DISEASE CONTROL AND PREVENTION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ORDER UNDER SECTION 361

OF THE PUBLIC HEALTH SERVICE ACT (42 U.S.C. 264)

AND 42 CODE OF FEDERAL REGULATIONS 70.2, 71.31(b), 71.32(b)

REQUIREMENT FOR PERSONS TO WEAR MASKS

WHILE ON CONVEYANCES AND AT TRANSPORTATION HUBS

SUMMARY:

Notice and Order; and subject to the limitations under ''Applicability,'' pursuant to 42 U.S.C. 264(a) and 42 CFR 70.2, 71.31(b), and 71.32(b):

(1) Persons [1] must wear [2] masks over the mouth and nose when traveling on conveyances into and within the United States. Persons must also wear masks at transportation hubs as defined in this Order.

(2) A conveyance operator transporting persons into and within the United States [3] must require all persons onboard to wear masks for the duration of travel.

(3) A conveyance operators operating a conveyance arriving at or departing from a U.S. port of entry must require all persons on board to wear masks for the duration of travel as a condition of controlled free pratique.[4]

(4) Conveyance operators must use best efforts to ensure that any person on the conveyance wears a mask when boarding, disembarking, and for the duration of travel. Best efforts include:

- Boarding only those persons who wear masks;
- instructing persons that Federal law requires wearing a mask on the conveyance and failure to comply constitutes a violation of Federal law;
- monitoring persons onboard the conveyance for anyone who is not wearing a mask and seeking compliance from such persons;
- at the earliest opportunity, disembarking any person who refuses to comply; and
- providing persons with prominent and adequate notice to facilitate awareness and compliance of the requirement of this Order to wear a mask; best practices may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; printing the requirement on transit tickets; or other methods as appropriate.

(5) Operators of transportation hubs must use best efforts to ensure that any person entering or on the premises of the transportation hub wears a mask. Best efforts include:

- Allowing entry only to those persons who wear masks;
- instructing persons that Federal law requires wearing a mask in the transportation hub and failure to comply constitutes a violation of Federal law;
- monitoring persons on the premises of the transportation hub for anyone who is not wearing a mask and seeking compliance from such persons;
- at the earliest opportunity, removing any person who refuses to comply from the premises of the transportation hub; and
- providing persons with prominent and adequate notice to facilitate awareness and compliance with the requirement of this Order to wear a mask; best practices may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or

[1] As used in this Order, ''persons'' includes travelers (*i.e.,* passengers and crew), conveyance operators, and any workers or service providers in the transportation hub.

[2] To ''wear a mask'' means to wear a mask over the nose and mouth.

[3] This includes international, interstate, or intrastate waterways, subject to the jurisdiction of the United States.

[4] As a condition of this controlled free pratique to commence or continue operations in the United States, conveyance operators must additionally require all persons to wear masks on board conveyances departing from the United States and for the duration of their travel until the conveyance arrives at the foreign destination if at any time any of the persons on the conveyance (passengers, crew, or conveyance operators) will return to the United States while this Order remains in effect. This precaution must be followed regardless of scheduled itinerary.

email; posted signage in multiple languages with illustrations; printing the requirement on transit tickets; or other methods as appropriate.

DEFINITIONS:

Controlled free pratique shall have the same definition as under 42 CFR 71.1, meaning ''permission for a carrier to enter a U.S. port, disembark, and begin operation under certain stipulated conditions.''

Conveyance shall have the same definition as under 42 CFR 70.1, meaning ''an aircraft, train, road vehicle,[5] vessel . . . or other means of transport, including military.'' Included in the definition of ''conveyance'' is the term ''carrier'' which under 42 CFR 71.1 has the same definition as conveyance under 42 CFR 70.1.

Conveyance operator means an individual operating a conveyance and an individual or organization causing or authorizing the operation of a conveyance.

Mask means a material covering the nose and mouth of the wearer, excluding face shields.[6]

Interstate traffic shall have the same definition as under 42 CFR 70.1, meaning

''(1):

(i) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation that is entirely within a state or possession—

(ii) From a point of origin in any state or possession to a point of destination in any other state or possession; or

(iii) Between a point of origin and a point of destination in the same state or possession but through any other state, possession, or contiguous foreign country.

(2) Interstate traffic does not include the following:

(i) The movement of any conveyance which is solely for the purpose of unloading persons or property transported from a foreign country or loading persons or property for transportation to a foreign country.

(ii) The movement of any conveyance which is solely for the purpose of effecting its repair, reconstruction, rehabilitation, or storage.''

Intrastate traffic means the movement of any conveyance or the transportation or movement of persons occurring solely within the boundaries of a state or territory, or on tribal land.

Possession shall have the same definition as under 42 CFR 70.1 and 71.1, meaning a ''U.S. territory.''

State shall have the same definition as under 42 CFR 70.1, meaning ''any of the 50 states, plus the District of Columbia.''

Territory shall have the same definition as ''U.S. territory'' under 42 CFR 70.1 and 71.1, meaning ''any territory (also known as possessions) of the United States, including American Samoa, Guam, the [Commonwealth of the] Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.''

Transportation hub means any airport, bus terminal, marina, seaport or other port, subway station, terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.

Transportation hub operator means an individual operating a transportation hub and an individual or organization causing or authorizing the operation of a transportation hub.

U.S. port shall have the same definition as under 42 CFR 71.1, meaning any ''seaport, airport, or border crossing point under the control of the United States.''

STATEMENT OF INTENT:

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Preservation of human life;
- Maintaining a safe and secure operating transportation system;
- Mitigating the further introduction, transmission, and spread of COVID–19 into the United States and from one state or territory into any other state or territory; and
- Supporting response efforts to COVID–19 at the Federal, state, local, territorial, and tribal levels.

APPLICABILITY:

This Order shall not apply within any state, locality, territory, or area under the jurisdiction of a Tribe that (1) requires a person to wear a mask on conveyances; (2) requires a person to wear a mask at transportation hubs; and (3) requires conveyances to transport only persons wearing masks. Such requirements must provide the same level of public health protection as—or greater protection than—the requirements listed herein.

In addition, the requirement to wear a mask shall not apply under the following circumstances:

- While eating, drinking, or taking medication, for brief periods;
- While communicating with a person who is hearing impaired when the ability to see the mouth is essential for communication;
- If, on an aircraft, wearing of oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation;
- If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance;[7] or
- When necessary to temporarily remove the mask to verify one's identity such as during Transportation Security Administration screening or when asked to do so by the ticket or gate agent or any law enforcement official.

This Order exempts the following categories of persons:[8]

- A child under the age of 2 years;
- A person with a disability who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).[9]

[5] This includes rideshares meaning arrangements where passengers travel in a privately owned road vehicle driven by its owner in connection with a fee or service.

[6] A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N–95 respirators fulfill the requirements of this Order. CDC guidance for attributes of acceptable masks in the context of this Order is available at: *https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html*.

[7] Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

[8] Operators of conveyances or transportation hubs may impose requirements, or conditions for carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the operator, as well as require evidence that the person does not have COVID–19 such as a negative result from a SARS–CoV–2 viral test or documentation of recovery from COVID–19. CDC definitions for SARS-CoV–2 viral test and documentation of recovery are available in the Frequently Asked Questions at: *https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html.* Operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or transportation hub. Operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

[9] This is a narrow exception that includes a person with a disability who cannot wear a mask

Continued

• A person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.

This Order exempts the following categories of conveyances, including persons on board such conveyances:

• Private conveyances operated solely for personal, non-commercial use;

• Commercial motor vehicles or trucks as these terms are defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle or truck;

• Conveyances operated or chartered by the U.S. military services provided that such conveyance operators observe Department of Defense precautions to prevent the transmission of COVID–19 that are equivalent to the precautions in this Order.

This Order applies to persons on conveyances and at transportation hubs directly operated by U.S. state, local, territorial, or tribal government authorities, as well as the operators themselves. U.S. state, local, territorial, or tribal government authorities directly operating conveyances and transportation hubs may be subject to additional federal authorities or actions, and are encouraged to implement additional measures enforcing the provisions of this Order regarding persons traveling onboard conveyances and at transportation hubs operated by these government entities.

To the extent permitted by law, and consistent with President Biden's Executive Order of January 21, 2021 (Promoting COVID–19 Safety in Domestic and International Travel),[10] Federal agencies are required to implement additional measures enforcing the provisions of this Order.

BACKGROUND:

There is currently a pandemic of respiratory disease (coronavirus disease 2019 or ''COVID–19'') caused by a novel coronavirus (SARS–COV–2). As of January 27, 2021, there have been 99,638,507 confirmed cases of COVID–19 globally, resulting in more than 2,141,000 deaths. As of January 27, 2021, there have been over 25,000,000 cases identified in the United States and over 415,000 deaths due to the disease. New SARS–CoV–2 variants have emerged in recent weeks, including at least one with evidence of increased transmissibility.[11]

The virus that causes COVID–19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet) mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths, eyes, or noses of people who are nearby and possibly be inhaled into the lungs. Infected people without symptoms (asymptomatic) and those in whom symptoms have not yet developed (pre-symptomatic) can also spread the virus. In general, the more closely an infected person interacts with others and the longer those interactions, the higher the risk of COVID–19 spread. COVID–19 may be transmitted by touching surfaces or objects that have the virus on them and then touching one's own or another person's eyes, nose, or mouth.

Masks help prevent people who have COVID–19, including those who are pre-symptomatic or asymptomatic, from spreading the virus to others.[12] Masks are primarily intended to reduce the emission of virus-laden droplets, *i.e.,* they act as source control by blocking exhaled virus.[13] This is especially relevant for asymptomatic or pre-symptomatic infected wearers who feel well and may be unaware of their infectiousness to others, and who are estimated to account for more than 50% of transmissions.[14] [15] Masks also provide personal protection to the wearer by reducing inhalation of these droplets, *i.e.,* they reduce wearers' exposure through filtration.[16] The community benefit of wearing masks for SARS–CoV–2 control is due to the combination of these effects; individual prevention benefit increases with increasing numbers of people using masks consistently and correctly.

Appropriately worn masks reduce the spread of COVID–19—particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID–19. Seven studies have confirmed the benefit of universal masking in community level analyses: in a unified hospital system,[17] a German city,[18] a U.S. State,[19] a panel of 15 U.S. States and Washington, DC,[20] [21] as well as both Canada [22] and the United States [23] nationally. Each analysis demonstrated that, following directives from organizational and political leadership for universal masking, new infections fell significantly. Two of these studies [24] [25] and an additional analysis of data from 200 countries that included localities within the United States [26] also demonstrated reductions in

for reasons related to the disability. CDC will issue additional guidance regarding persons who cannot wear a mask under this exemption. *https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html.*

[10] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-promoting-covid-19-safety-in-domestic-and-international-travel/.*

[11] *https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html.*

[12] *https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html.*

[13] Leung NHL, Chu DKW, Shiu EYC, et al. Respiratory virus shedding in exhaled breath and efficacy of face masks. *Nature Medicine.* 2020;26(5):676–680.*https://dx.doi.org/10.1038/s41591-020-0843-2.*

[14] Moghadas SM, Fitzpatrick MC, Sah P, et al. The implications of silent transmission for the control of COVID–19 outbreaks. *Proc Natl Acad Sci U S A.* 2020;117(30):17513–17515.10.1073/pnas.2008373117. *https://www.ncbi.nlm.nih.gov/pubmed/32632012.*

[15] Johansson MA, Quandelacy TM, Kada S, et al. SARS–CoV–2 Transmission From People Without COVID–19 Symptoms. Johansson MA, et al. JAMA Netw Open. 2021 Jan 4;4(1):e2035057. doi: 10.1001/jamanetworkopen.2020.35057.

[16] Ueki H, Furusawa Y, Iwatsuki-Horimoto K, et al. Effectiveness of Face Masks in Preventing Airborne Transmission of SARS–CoV–2. *mSphere.* 2020;5(5).10.1128/mSphere.00637–20. *https://www.ncbi.nlm.nih.gov/pubmed/33087517.*

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[23] Chernozhukov V, Kasahara H, Schrimpf P. Causal Impact of Masks, Policies, Behavior on Early Covid–19 Pandemic in the U.S. J Econom. 2021 Jan;220(1):23–62. doi: 10.1016/j.jeconom.2020.09.003. Epub 2020 Oct 17.

[24] Hatzius J, Struyven D, Rosenberg I. Face Masks and GDP. *Goldman Sachs Research https://www.goldmansachs.com/insights/pages/face-masks-and-gdp.html.* Accessed January 20, 2021.

[25] Chernozhukov V, Kasahara H, Schrimpf P. Causal Impact of Masks, Policies, Behavior on Early Covid–19 Pandemic in the U.S. J Econom. 2021 Jan;220(1):23–62. doi: 10.1016/j.jeconom.2020.09.003. Epub 2020 Oct 17.

[26] Leffler CT, Ing EB, Lykins JD, Hogan MC, McKeown CA, Grzybowski A. Association of country-wide coronavirus mortality with demographics, testing, lockdowns, and public wearing of masks. Am J Trop Med Hyg. 2020 Dec;103(6):2400–2411. doi: 10.4269/ajtmh.20–1015. Epub 2020 Oct 26.

mortality. An economic analysis using U.S. data found that, given these effects, increasing universal masking by 15% could prevent the need for lockdowns and reduce associated losses of up to $1 trillion or about 5% of gross domestic product.[27]

Wearing a mask especially helps protect those at increased risk of severe illness from COVID–19 [28] and workers who frequently come into close contact with other people (*e.g.,* at transportation hubs). Masks are most likely to reduce the spread of COVID–19 when they are widely used by people in public settings. Using masks along with other preventive measures, including social distancing, frequent handwashing, and cleaning and disinfecting frequently touched surfaces, is one of the most effective strategies available for reducing COVID–19 transmission.

Traveling on multi-person conveyances increases a person's risk of getting and spreading COVID–19 by bringing persons in close contact with others, often for prolonged periods, and exposing them to frequently touched surfaces. Air travel often requires spending time in security lines and crowded airport terminals. Social distancing may be difficult if not impossible on flights. People may not be able to distance themselves by the recommended 6 feet from individuals seated nearby or those standing in or passing through the aircraft's aisles. Travel by bus, train, vessel, and other conveyances used for international, interstate, or intrastate transportation pose similar challenges.

Intrastate transmission of the virus has led to—and continues to lead to—interstate and international spread of the virus, particularly on public conveyances and in travel hubs, where passengers who may themselves be traveling only within their state or territory commonly interact with others traveling between states or territories or internationally. Some states, territories, Tribes, and local public health authorities have imposed mask-wearing requirements within their jurisdictional boundaries to protect public health.[29] Any state or territory without sufficient mask-wearing requirements for transportation systems within its jurisdiction has not taken adequate measures to prevent the spread of COVID–19 from such state or territory to any other state or territory. That determination is based on, *inter alia,* the rapid and continuing transmission of the virus across all states and territories and across most of the world. Furthermore, given how interconnected most transportation systems are across the nation and the world, local transmission can grow even more quickly into interstate and international transmission when infected persons travel on non-personal conveyances without wearing a mask and with others who are not wearing masks.

Therefore, I have determined that the mask-wearing requirements in this Order are reasonably necessary to prevent the further introduction, transmission, or spread of COVID–19 into the United States and among the states and territories. Individuals traveling into or departing from the United States, traveling interstate, or traveling entirely intrastate, conveyance operators that transport such individuals, and transportation hub operators that facilitate such transportation, must comply with the mask-wearing requirements set forth in this Order.

America's transportation systems are essential. Not only are they essential for public health, they are also essential for America's economy and other bedrocks of American life. Those transportation systems carry life-saving medical supplies and medical providers into and across the nation to our hospitals, nursing homes, and physicians' offices. Trains, planes, ships, and automobiles bring food and other essentials to our communities and to our homes. Buses bring America's children and teachers to school. Buses, trains, and subways, bring America's workforce to their jobs.

Requiring masks on our transportation systems will protect Americans and provide confidence that we can once again travel safely even during this pandemic. Therefore, requiring masks will help us control this pandemic and aid in re-opening America's economy.

The United States and countries around the world are currently embarking on efforts to vaccinate their populations, starting with healthcare personnel and other essential workers at increased risk of exposure to SARS–CoV–2 and people at increased risk for severe illness from the virus. While vaccines are highly effective at preventing severe or symptomatic COVID–19, at this time there is limited information on how much the available COVID–19 vaccines may reduce transmission in the general population and how long protection lasts.[30] Therefore, this mask requirement, as well as CDC recommendations to prevent spread of COVID–19,[31] additionally apply to vaccinated persons. Similarly, CDC recommends that people who have recovered from COVID–19 continue to take precautions to protect themselves and others, including wearing masks; [32] therefore, this mask requirement also applies to people who have recovered from COVID–19.

ACTION:

Until further notice, under 42 U.S.C. 264(a) and 42 CFR 70.2, 71.31(b), and 71.32(b), unless excluded or exempted as set forth in this Order, a person must wear a mask while boarding, disembarking, and traveling on any conveyance into or within the United States. A person must also wear a mask at any transportation hub that provides transportation within the United States.

Conveyance operators traveling into or within the United States may transport only persons wearing masks and must use best efforts to ensure that masks are worn when embarking, disembarking, and throughout the duration of travel. Operators of transportation hubs must use best efforts to ensure that any person entering or on the premises of the transportation hub wears a mask.

As a condition of receiving controlled free pratique under 42 CFR 71.31(b) to enter a U.S. port, disembark passengers, and begin operations at any U.S. port of entry, conveyances arriving into the United States must require persons to wear masks while boarding, disembarking, and for the duration of travel. Conveyance operators must also require all persons to wear masks while boarding and for the duration of their travel on board conveyances departing from the United States until the conveyance arrives at the foreign destination, if at any time any of the persons onboard (passengers, crew, or conveyance operators) will return to the United States while this Order remains in effect. These travel conditions are

[27] Hatzius J, Struyven D, Rosenberg I. Face Masks and GDP. *Goldman Sachs Research https://www.goldmansachs.com/insights/pages/face-masks-and-gdp.html.* Accessed January 20, 2021.

[28] *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html.*

[29] Based on internet sources, 37 states plus DC and Puerto Rico mandate the wearing of masks in public. Among the jurisdictions that have imposed mask mandates, variations in requirements exist. For example, exemptions for children range in cutoff age from 2 to 12, but masks are generally required in indoor public spaces such as restaurants and stores, on public transit and ride-hailing services, and outdoors when unable to maintain 6 feet of distance from others. *See https://www.aarp.org/health/healthy-living/info-2020/states-mask-mandates-coronavirus.html* (accessed January 28, 2021).

[30] *https://www.cdc.gov/vaccines/covid-19/info-by-product/clinical-considerations.html.*

[31] *https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html.*

[32] *https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html.*

necessary to mitigate the harm of further introduction of COVID–19 into the United States.

Requiring a properly worn mask is a reasonable and necessary measure to prevent the introduction, transmission and spread of COVID–19 into the United States and among the states and territories under 42 U.S.C. 264(a) and 42 CFR 71.32(b). Among other benefits, masks help prevent dispersal of an infected person's respiratory droplets that carry the virus. That precaution helps prevent droplets from landing in the eye, mouth, or nose or possibly being inhaled into the lungs of an uninfected person, or from landing on a surface or object that an uninfected person may then touch and then touch his or her own or another's eyes, nose, or mouth. Masks also provide some protection to the wearer by helping reduce inhalation of respiratory droplets.

This Order shall not apply within any state, locality, territory, or area under the jurisdiction of a Tribe, where the controlling governmental authority: (1) Requires a person to wear a mask on conveyances; (2) requires a person to wear a mask at transportation hubs; and (3) requires conveyances to transport only persons wearing masks. Those requirements must provide the same level of public health protection as—or greater protection than—the requirements listed herein.

In accordance with 42 U.S.C. 264(e), state, local, territorial, and tribal authorities may impose additional requirements that provide greater public health protection and are more restrictive than the requirements in this Order. Consistent with other federal, state, or local legal requirements, this Order does not preclude operators of conveyances or transportation hubs from imposing additional requirements, or conditions for carriage, that provide greater public health protection and are more restrictive than the requirements in this Order (*e.g.,* requiring a negative result from a SARS–CoV–2 viral test or documentation of recovery from COVID–19 or imposing requirements for social distancing or other recommended protective measures).

This Order is not a rule within the meaning of the Administrative Procedure Act (''APA'') but rather is an emergency action taken under the existing authority of 42 U.S.C. 264(a) and 42 CFR 70.2, 71.31(b), 71.32(b). In the event that a court determines this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date. Considering the public health emergency caused by COVID–19, it would be impracticable and contrary to the public's health, and by extension the public's interest, to delay the issuance and effective date of this Order. Similarly, the Office of Information and Regulatory Affairs has determined that if this Order were a rule, it would be a major rule under the Congressional Review Act, but there would not be a delay in its effective date as the agency has determined that there would be good cause to make the requirements herein effective immediately under the APA.

This order is also an economically significant regulatory action under Executive Order 12866 and has therefore been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget. The agency is proceeding without the complete analysis required by Executive Order 12866 under the emergency provisions of 6(a)(3)(D) of that Order.

If any provision of this Order, or the application of any provision to any carriers, conveyances, persons, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any carriers, conveyances, persons, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

To address the COVID–19 public health threat to transportation security, this Order shall be enforced by the Transportation Security Administration under appropriate statutory and regulatory authorities including the provisions of 49 U.S.C. 106, 114, 44902, 44903, and 46301; and 49 CFR part 1503, 1540.105, 1542.303, 1544.305 and 1546.105.

This Order shall be further enforced by other federal authorities and may be enforced by cooperating state and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18 and 71.2.[33]

EFFECTIVE DATE:

This Order shall enter into effect on February 1, 2021, at 11:59 p.m. and will remain in effect unless modified or rescinded based on specific public health or other considerations, or until the Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists.

[33] While this Order may be enforced and CDC reserves the right to enforce through criminal penalties, CDC does not intend to rely primarily on these criminal penalties but instead strongly encourages and anticipates widespread voluntary compliance as well as support from other federal agencies in implementing additional civil measures enforcing the provisions of this Order, to the extent permitted by law and consistent with President Biden's Executive Order of January 21, 2021 (Promoting COVID–19 Safety in Domestic and International Travel).

Dated: February 1, 2021.

Sherri Berger,

Acting Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021–02340 Filed 2–1–21; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20EG31DW50100; OMB Control Number 1028-New]

Agency Information Collection Activities; Hydrography Addressing tool

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before April 5, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–xxxx in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Michael Tinker by email at *mdtinker@usgs.gov* or by telephone at 303–202–4476.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below.

We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Hydrography Addressing Tool (HydroAdd Tool) is a website application under development by the USGS National Geospatial Program, National Geospatial Technical Operations Center (NGTOC) which will allow users to reference stream network-specific geographic locations, also known as addressing, of their own data to the National Hydrography Dataset (NHD). Users must make their geospatial data available as a web feature service. The HydroAdd Tool will 'consume' the user's web feature service and will allow users to edit the geometry of their own data and update the user's web feature service with attribute information of the coincident NHD features. Users cannot edit the NHD in this tool.

Anyone with the requisite technical knowledge can use HydroAdd tool. Users will register in the HydroAdd website and are assigned editing roles by the USGS application administrators. When registering, editors are required to fill out a profile that contains organizational contact information. This information is stored in the application database. A future iteration of the HydroAdd Tool may have reporting functions that are visible to all users. These reports could detail the edit submissions within specified date ranges. The user's email and organization could be visible on these reports and could be viewed by all users have editing privileges in the application.

Title of Collection: Hydrography Addressing Tool.

OMB Control Number: New.

Form Number: NA.

Type of Review: New.

Respondents/Affected Public: USGS Water Scientists, NHD stewards and editors affiliated with Federal, State, Local governments, and universities.

Total Estimated Number of Annual Respondents: 200.

Total Estimated Number of Annual Responses: 200.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 200.

Respondent's Obligation: Voluntary.

Frequency of Collection: one time, or as needed if respondent business contact information changes.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

David Brostuen,

Acting Director, National Geospatial Technical Operations Center.

[FR Doc. 2021–02228 Filed 2–2–21; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-31417; 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 23, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by February 18, 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 23, 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:

Key: State, County, Property Name, Multiple Name(if applicable), Address/Boundary, City, Vicinity, Reference Number.

INDIANA

Allen County

Driving Park-Seven States Historic District, (Park and Boulevard System of Fort Wayne, Indiana MPS), Roughly bounded by Vermont Ave., Crescent Ave. Florida Dr., State Blvd., West and East Drs., Curdes, and Dodge Aves. Ave Fort Wayne, MP100006201

Carroll County

Franklin Street Stone Arch Bridge, Franklin St. over Old Canal, Delphi, SG100006203

Lancaster Covered Bridge, Cty. Rd. 500 W–500 S over Wildcat Cr., Owasco vicinity, SG100006206

Little Rock Creek Stone Arch Bridge, Cty. Rd. 1025 N–175 W over Little Rock Cr., Lockport vicinity, SG100006207

Washington Street Stone Arch Bridge, Washington St. over Old Canal, Delphi, SG100006209

Jackson County

Brownstown Courthouse Square Historic District, Roughly Walnut St. between Sugar and Poplar Sts. and Main St. between Cross and Spring Sts., Brownstown, SG100006202

Johnson County

Bagby-Doub Farmstead, 308 Worthsville Rd., Greenwood vicinity, SG100006200

Marion County

Ford Motor Company Indianapolis Assembly Plant, 1315 East Washington St., Indianapolis, SG100006204

James E. Roberts School 97, (Public School Buildings in Indianapolis Built Before 1940 MPS), ≤1401 East 10th St., Indianapolis, MP100006205
P.R. Mallory Company Factory Historic District, 3029 East Washington St. and 101 South Parker Ave., Indianapolis, SG100006208

IOWA

Linn County

Meyers Farmstead Historic District, 300 West Market St., Lisbon, SG100006183
Winneshiek County, Luther College Campus Historic District, 700 College Dr., Decorah, SG100006184

NEBRASKA

Dundy County

Zorn Theatre, (Historic Movie Theaters in Nebraska MPS), 706 Chief St., Benkelman, MP100006190

Hall County

Soldiers and Sailors Home, 2300 West Capital Ave., Grand Island, SG100006191

Harlan County

Cordelia Bennett Preston Memorial Library, 510 South Orleans Ave., Orleans, SG100006192
Hotel Orleans, 101 East Pine St., Orleans, SG100006193

Merrick County

Clarksville Township Carnegie Library, (Carnegie Libraries in Nebraska MPS AD), 108 West Amity St., Clarks, MP100006194

NEW YORK

Franklin County

Oval Wood Dish Factory, 100–120 Demars Blvd. and 13 Dish Ave., Tupper Lake, SG100006198

Nassau County

Nassau County Courthouse, 262 Old Country Rd., Mineola, SG100006213
Otsego County, St. Stephen's Chapel, 124 Cty. Rd. 10, Morris, SG100006199

OHIO

Ottawa County

Union Chapel, 5258 East Porter St., Port Clinton vicinity, SG100006196

Scioto County

100 Mile House, 4866 US 52 #D, Stout, SG100006197

Wayne County

Tawney Musser Farm, 10495 Black Diamond Rd., Marshallville vicinity, SG100006182

OREGON

Clackamas County

Kinsman, John and Elizabeth, House, 17014 SE Oatfield Rd., Milwaukie vicinity, SG100006185

Multnomah County

J. K. Gill Company Building, (Downtown Portland, Oregon MPS), 408 SW 5th Ave., Portland, MP100006186
Mallory Avenue Christian Church, 126 NE Alberta St., Portland, SG100006187
Terwilliger Parkway, (City Beautiful Movement and Civic Planning in Portland, Oregon MPS), 3000 SW Terwilliger Blvd., Portland, MP100006188

VIRGINIA

Caroline County

Port Royal Historic District (Boundary Increase), Jct. of US 301 and US 17 continuing north to the Rappahannock R., Port Royal, BC100006212

A request for removal has been made for the following resource:

NEBRASKA

Washington County

Trinity Seminary Building, College Dr., Blair, OT80004528

Additional documentation has been received for the following resources:

VIRGINIA

Caroline County

Port Royal Historic District (Additional Documentation), Bounded by Rappahannock R., US 301, Patricia Ln., Frederick, and Back Sts., Port Royal, AD70000786

Authority: Section 60.13 of 36 CFR part 60.

Dated: January 26, 2021.

Sherry Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2021–02191 Filed 2–2–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Apparatus and Methods of Opening Containers, DN 3529;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Draft Top, LLC on January 28, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain apparatus and methods of opening containers. The complainant names as respondents: Mimtiml of China; KKS Enterprises Co., Ltd. of China; Kingskong Enterprises Co., Ltd.; Du Zuojun of China; WN Shipping USA, Inc. of Inwood, NY; Shuje Wei of Pomona, CA; Express Cargo Forwarded, Ltd. of Los Angeles, CA; Tofba International, Inc. of Hawthorne, CA; and Hou Wenzheng of Hebron, KY. The complainant requests that the Commission issue a general exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3529'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 29, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–02220 Filed 2–2–21; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1183]

Certain Foldable Reusable Drinking Straws and Components and Accessories Thereof; Issuance of a General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a general exclusion order (''GEO'') prohibiting the unlicensed importation of foldable reusable drinking straws and components and accessories thereof that infringe one or more of claims 1–12 and 14–17 of U.S. Patent No. 10,123,641 (''the '641 patent''). The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 13, 2019, based on a complaint filed on behalf of The Final Co. LLC (''Final'' or ''Complainant'') of Santa Fe, New Mexico. 84 FR 61639 (Nov. 13, 2019). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain foldable reusable drinking straws and components and accessories thereof by reason of infringement of claims 1–12, 14–17, and 20 of the '641 patent. *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission's notice of investigation named seventeen respondents: Huizhou Sinri Technology Company Limited of Guangdong, China; Hebei Serun Import and Export Trade Co., Ltd. of Hebei, China; Dongguan Stirling Metal Products Co., Ltd. of Guangdong, China; Ningbo Wwpartner Plastic Manufacture Co., Ltd. of Zhejiang, China; Shenzhen Yuanzhen Technology Co., Ltd. of Shenzhen, China; Jiangmen Boyan Houseware Co., Ltd. of Guangdong, China; Shanghai Rbin Industry And Trade Co., Ltd. of Shanghai, China; Jiangmen Shengke Hardware Products Co., Ltd. of Guangdong, China; Funan Anze Trading Co., Ltd. of Anhui, China; Hangzhou Keteng Trade Co., Ltd. of Zhejiang, China; Hunan Jiudi Shiye Import And Export Trading Co., Ltd. of Hunan, China (''Hunan Jiudi''); Shenzhen Yaya Gifts Co., Ltd. of Guangdong, China; Ningbo Weixu International Trade Co., Ltd. of Zhejiang, China (''Ningbo Weixu''); Ningbo Beland Commodity Co., Ltd. of Zhejiang, China; Xiamen One X Piece Imp. & Exp. Co., Ltd. of Fujian, China; Hunan Champion Top

Technology Co., Ltd. of Hunan, China; and Yiwu Lizhi Trading Firm of Zhejiang, China. *Id.* at 61639–40. The Office of Unfair Import Investigations (''OUII'') is also named as a party in this investigation. *Id.* at 61640.

The Commission terminated respondents Ningbo Weixu and Hunan Jiudi from the investigation based on Complainant's partial withdrawal of the complaint. *See* Order No. 7 (Feb. 13, 2019), *unreviewed by* Comm'n Notice (Mar. 9, 2020).

On March 16, 2020, the Commission found the remaining fifteen respondents (collectively, the ''Defaulted Respondents'') in default. Order No. 8 (Mar. 3, 2020), *unreviewed by* Comm'n Notice (Mar. 16, 2020).

On April 7, 2020, Complainant filed a motion for summary determination of a violation of section 337 by the Defaulted Respondents. On May 5, 2020, Complainant filed a motion for leave to supplement the motion for summary determination, and the ALJ granted leave on May 8, 2020. On May 27, 2020, OUII filed its response in support of Complainant's motion.

On July 17, 2020, the ALJ issued Order No. 13, an ID granting in part the motion for summary determination. *See* Order No. 13 (July 17, 2020). The ALJ found that Complainant established importation of the accused products and infringement of claims 1–12 and 14–17 of the '641 patent by Defaulted Respondents and that Complainant satisfied the technical prong of the domestic industry requirement. However, the ALJ did not grant the motion with respect to Complainant's satisfaction of the economic prong of the domestic industry requirement or infringement of claim 20, so the ALJ did not find a violation of section 337 by the Defaulted Respondents. The Commission determined not to review Order No. 13. *See* Notice (Aug. 18, 2020).

Also, on July 17, 2020, the ALJ issued Order No. 14, which required the parties to choose from several options on how to proceed. *See* Order No. 14, at 1–2 (July 17, 2020). On July 31, 2020, Complainant and OUII filed a joint response to Order No. 14. The joint response stated that Complainant would file a motion to amend the complaint to terminate its assertion of claim 20 of the '641 patent, and an additional motion for summary determination on the remaining issues.

On August 7, 2020, Complainant filed a motion for partial summary determination regarding the economic prong of the domestic industry requirement, a remedy in the form of a general exclusion order, and a bond during the period of Presidential review in the amount of one hundred percent (100%) of the entered value. On August 14, 2020, Complainant moved to replace Exhibit 11C within its motion for summary determination, which was granted by the ALJ. *See* Order No. 16 (Aug. 20, 2020). On August 24, 2020, OUII filed its response in support of Complainant's motion.

On August 17, 2020, Complainant moved to terminate the investigation with respect to asserted claim 20 by reason of withdrawal of the complaint allegations. On August 26, 2020, the ALJ granted the motion to withdraw claim 20. *See* Order No. 17 (Aug. 26, 2020), *unreviewed by* Comm'n Notice (Sep. 15, 2020).

On September 22, 2020, the ALJ issued Order No. 18, an ID granting Complainant's motion for partial summary determination that a domestic industry exists with respect to Complainant's research and development investments under section 337(a)(3)(C) and finding a violation of section 337 with respect to claims 1–12 and 14–17 of the '641 patent by the Defaulted Respondents. The ID also denied Complainant's motion for summary determination under section 337(a)(3)(B). No petitions for review of the ID were filed.

The ALJ concurrently issued a Recommended Determination (''RD'') on the issues of remedy and bonding. The RD recommended the issuance of a GEO and setting the bond during the period of Presidential review in the amount of one hundred percent (100%) of the entered value. The Commission solicited comments from the public on public interest issues raised by the recommended relief. 85 FR 67010 (Oct. 21, 2020). No submissions were filed in response to the Commission Notice.

On November 5, 2020, the Commission determined not to review Order No. 18, thereby adopting the ID's finding of a violation of section 337 in connection with claims 1–12 and 14–17 of the '641 patent. 85 FR 71942–43 (Nov. 12, 2020). (The Order's denial of summary determination as to section 337(a)(3)(B) was not an initial determination subject to Commission review and hence was not adopted by the Commission). The Commission also requested the parties, interested government agencies, and other interested parties to file submissions on the issues of remedy, the public interest, and bonding during the period of Presidential review. *Id.* at 71944. On November 19 and November 23, 2020, OUII and Complainant, respectively, filed submissions on the issues of remedy, the public interest, and bonding as requested by the Commission. *See id.* at 71943–44. On November 30, 2020, OUII and Complainant each filed reply submissions. No other submissions were received in response to the Notice.

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed importation of foldable reusable drinking straws and components and accessories thereof that infringe one or more of claims 1–12 and 14–17 of the '641 patent. The foldable reusable drinking straws and components and accessories thereof that are subject to the GEO are as follows: individual foldable reusable drinking straws and components thereof, cases used to store the foldable reusable drinking straws, and tools used for cleaning the foldable reusable drinking straws. The Commission has also determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the exclusion order. Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of one hundred percent (100%) of the entered value of the imported articles subject to the GEO. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is hereby terminated.

The Commission vote for this determination took place on January 28, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 28, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–02195 Filed 2–2–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1014 and 1016 (Third Review)]

Polyvinyl Alcohol From China and Japan; Cancellation of Hearing for Third Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: January 27, 2021.

FOR FURTHER INFORMATION CONTACT: Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective September 17, 2020, the Commission established a schedule for the conduct of the subject full five-year reviews (85 FR 59545, September 22, 2020). Counsel for domestic producers filed its request to appear at the hearing on January 26, 2021. No other party filled a timely request to appear at the hearing. On January 27, 2021, counsel for the domestic producers filed a request that the Commission cancel the hearing. Counsel indicated a willingness to respond to any Commission questions in lieu of an actual hearing and, in the alternative, domestic producers would appear at the hearing if held. Consequently, the public hearing in connection with these reviews, scheduled to begin at 9:30 a.m. on February 2, 2021, via videoconference, is cancelled. The Commission determined that no earlier announcement of this cancellation was possible. Parties to these reviews should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on February 10, 2021.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 19, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–02221 Filed 2–2–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Robotic Floor Cleaning Devices and Components Thereof, DN 3530;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of iRobot Corporation on January 28, 2021. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain robotic floor cleaning devices and components thereof. The complainant names as respondents: SharkNinja Operating LLC, SharkNinja Management LLC, SharkNinja Management Co., and EP Midco LLC of Needham, MA; and SharkNinja Hong Kong Co. Ltd. of Hong Kong. The complainant requests that the Commission issue a limited exclusion order a cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3530'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 29, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–02219 Filed 2–2–21; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0068]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; Extension without Change of a Currently Approved Collection; Police Check Inquiry—ATF F 8620.42

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until April 5, 2021.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: John Dugan, Chief, Physical Security Programs Branch/Security & Emergency Programs Division, either by mail at 99 New York Avenue NE, Washington, DC 20226 or by email at *John.T.Dugan@atf.gov,* or by telephone at 202–648–7935.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* Extension without change of a currently approved collection.

2. *The Title of the Form/Collection:* Police Check Inquiry.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 8620.42.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): None.

Abstract: The Police Check Inquiry—ATF Form 8620.42 is used to collect personally identifiable information (PII) to determine if non-ATF personnel meet the basic requirements for escorted access to ATF facilities, non-sensitive information and/or construction sites.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,000 respondents will use the form annually, and it will take each respondent approximately 4.98 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 83 hours, which is equal to 1000 (# of respondents) * .083 (4.98 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice

Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: January 28, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–02192 Filed 2–2–21; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

On January 20, 2021, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Utah in the lawsuit entitled *United States of America* v. *Magnesium Corporation of America, et al.,* Civil Action No. 2:01CV0040B.

If approved by the court, the consent decree would resolve the claims of the United States against US Magnesium LLC (''USM''), the Renco Group, Inc. (''Group''), the Ira Leon Rennert Revocable Trusts (''Trusts''), and Mr. Ira Leon Rennert (''Rennert''), collectively Defendants, for injunctive relief and civil penalties for alleged violations of the Resource Conservation and Recovery Act (''RCRA'') at USM's magnesium production facility in Rowley, Utah. The consent decree would require USM to: (1) Make extensive process modifications at the facility, including construction of a filtration plant to treat all wastewaters, that will reduce the environmental impacts from its production operations and ensure greater protection for its workers; (2) establish appropriate financial assurance for closure or corrective action of certain waste management areas in the operating areas of the facility; (3) pay a civil penalty of $250,000; and (4) perform the CERCLA Response Action, which includes construction of a barrier wall around 1700 acres of the operating portions of the facility to prevent leaks or breaches of hazardous materials to the Great Salt Lake, and the payment of EPA costs incurred in connection with the CERCLA Response Action. The United States and the Settling Defendants also would implement the 2019 bankruptcy settlement that resolved claims between the United States and USM's predecessors.

In return for the Settling Defendants' compliance with these requirements, the consent decree would resolve past RCRA violations at the Rowley facility that the United States' complaint alleges. Provided that the Settling Defendants remain in compliance with the consent decree's requirements, including payment of EPA CERCLA Response Action costs, the United States would covenant not to sue the Settling Defendants under CERCLA for the CERCLA Response Action and EPA's CERCLA Response Action costs.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Magnesium Corporation of America, et al.,* D.J. Ref. No. 90–7–1–06980. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $101.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the Appendices and signature pages, the cost is $20.00.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–02216 Filed 2–2–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that 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 on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new information collection of the ''QCEW Business Supplement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before April 5, 2021.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) intends to implement a new collection for a QCEW Business Supplement (QBS). Through the QBS, the BLS will be able to capture information on the US economy in a more efficient and timely manner than is currently possible. The QBS is intended to be a versatile collection instrument that will allow BLS to quickly collect and publish information so that stakeholders and data users can understand the impact of specific events on the US economy as they occur, improving the relevancy of the data.

The QBS is designed to incorporate new questionnaires as the need arises based on topics of relevance. BLS initially published a notice requesting comments on this collection in 85 FR

3426, on January 21, 2020, but the collection was postponed so the BLS could collect the Business Response Survey (BRS). The initial collection under the QBS will be a follow-up to the BRS, conducted in 2020, which captured information about changes to businesses operations, employment and workforce flexibilities, and benefits that occurred as a result of the onset of the Coronavirus pandemic. The BRS was a one-time collection which provided critical information on the U.S. business response to the Coronavirus pandemic to help provide policy makers and data users with additional information to help inform decisions. This follow-up survey to the BRS, under the QBS collection, will collect information on how establishments are coping with the transition from the height of the pandemic into a period of economic recovery.

II. Method of Collection

The BLS will use the Annual Refiling Survey (ARS) as a platform for conducting the QBS. Each year, the BLS Quarterly Census of Employment and Wages (QCEW) Program conducts the ARS by reaching out to approximately 1.2 million establishments requesting verification of their main business activity, and their mailing and physical location addresses. The fully web-based ARS allows for an accelerated timeframe for collection and provides a low-cost platform for conducting the quick, short surveys of the QBS. The QBSs accompanying the ARS will have little data collection overhead, leveraging the respondent contact process undertaken as part of the production ARS. QBS Respondents already logged into the ARS secure website will be directed to a QBS and asked to answer a limited number of additional survey questions after completing the ARS.

II. Current Action

Office of Management and Budget clearance is being sought for the QCEW Business Supplement (QBS).

The QBS, based on the ARS data collection platform, will allow BLS to leverage the multitude of information already known about the sample units to allow for targeted sampling. It also will permit BLS to target only the units meeting the specific set of characteristics desired allowing BLS to delve into specific areas of economic interest without burdening establishments which do not meet the specific targeted features.

The QBS is designed to encourage a fast response and minimize respondent burden on the public by limiting the number of questions on each survey and by asking questions that respondents should be able to answer without research or referring to records. In this manner, BLS can provide information that is needed quickly and is not collected elsewhere.

The QBS is designed to incorporate new questionnaires as the need for data arises, as frequently as twice a year. The BLS plans to conduct multiple small surveys under the QBS clearance. The initial survey will focus on how establishments are coping with the current status of the Coronavirus pandemic and the transition period that they are currently experiencing. Questions will cover a range of establishment topics including changes in telework, paid sick leave, demand for products and services, changes in products or services ordered, rehiring activities, recruitment activities, mandated closures, and government assistance.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: QCEW Business Supplement.

OMB Number: 1220–NEW.

Type of Review: New Collection.

Agency: Bureau of Labor Statistics.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions, and farms.

Total Respondents: 150,000.

Frequency: One time.

Total Responses: 150,000.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 25,000 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, January 28, 2021.

Mark Staniorski,

Chief, Division of Management Systems.

[FR Doc. 2021–02208 Filed 2–2–21; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2020–0002]

National Advisory Committee on Occupational Safety and Health (NACOSH); Notice of Membership Appointments

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of NACOSH membership appointments.

SUMMARY: On January 14, 2020, the Secretary of Labor appointed four members to serve on NACOSH.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Francis Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999, TTY (877–889–5627); email *meilinger.francis2@dol.gov.*

For general information: Ms. Amy Agro Wangdahl, Director, OSHA Office of Maritime and Agriculture, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–2066, TTY (877–889–5627); email *wangdahl.amy@dol.gov.*

For copies of this **Federal Register** *Notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) established NACOSH to advise, consult with and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services (HHS) on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act

(FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR part 1912a).

NACOSH is comprised of 12 members: Four public representatives, two management representatives, two labor representatives, two occupational safety professional representatives, and two occupational health professional representatives (29 CFR 1912a.2). The Secretary of Labor appoints all of these members. However, the Secretary of HHS designates four of the representatives: Two of the four public representatives and the two occupational health professional representatives. The terms of six NACOSH of the twelve members expired on July 31, 2020, and the remaining six NACOSH members' terms will expire on July 31, 2021.

On February 26, 2020, OSHA published a request for nominations for the six NACOSH positions that would expire on July 31, 2020. Specifically, OSHA requested nominations for:

- Two public representatives (one to be designated by the Secretary of HHS);
- One management representative;
- One labor representative;
- One occupational safety professional representative; and
- One occupational health professional representative (to be designated by the Secretary of HHS).

After the nomination period closed, OSHA provided HHS with all nominations and supporting materials for the two vacancies in the membership categories which the Secretary of HHS designates. HHS has indicated that the Secretary of HHS will designate two NACOSH members to fill the vacant positions at a later date. In the meantime, the Secretary of Labor proceeded with the appointment of individuals to the remaining four positions.

NACOSH members serve staggered terms, unless the member becomes unable to serve, resigns, ceases to be qualified to serve, or is removed by the Secretary. Accordingly, the Secretary has appointed four members to a two-year term. If a vacancy occurs before a term expires, the Secretary may appoint a new member who represents the same interest as the predecessor to serve the remainder of the unexpired term. The Committee must meet at least two times a year (29 U.S.C. 656(a)(2)).

II. Appointment of Committee Members

OSHA received nominations of highly qualified individuals in response to the agency's request for nominations (85 FR 11111, February 26, 2020). The Secretary appointed NACOSH members on the basis of their experience and competence in the field of occupational safety and health (29 CFR 1912a.2). The newly appointed NACOSH members are:

Public Representative

- Leanne Cobb, Palm Beach County Board of County Commissioners

Labor Representative

- Rebecca Reindel, AFL–CIO

Management Representative

- Amy K. Harper, National Safety Council

Safety Representative

- Kathleen Dobson, Alberici Constructors, Inc.

Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 5 U.S.C. App. 2; 29 U.S.C. 656; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 8–2020 (85 FR 58393, September 18, 2020).

Signed at Washington, DC, on January 28, 2021.

Amanda L. Edens,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–02212 Filed 2–2–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TUV SUD America, Inc.: Application for Expansion of Recognition.

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TUV SUD America, Inc. (TUVAM) for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 18, 2021.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0043 Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries, (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET. *Please note:* While OSHA's docket office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the rulemaking record by express delivery, hand delivery, and messenger service.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2007–0043). All comments, including any personal information you provide, such as social security numbers and date of births, are placed in the public docket without change, and may be made available online at *https://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying through the OSHA Docket Office.

Extension of comment period: Submit requests for an extension of the comment period on or before February 18, 2021 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution

Avenue NW, Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor by phone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor by phone (202) 693–2110 or email *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that TUV SUD America, Inc. (TUVAM) is applying for expansion of the current recognition as a NRTL. TUVAM requests the addition of eight test standards to their NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVAM, which details the NRTL's scope of recognition. These pages are available from the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVAM currently has six facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: TUV SUD America, Inc., 10 Technology Drive, Peabody, MA 01960. A complete list of TUVAM's scope of recognition (including sites) recognized by OSHA is available at: *https://www.osha.gov/dts/otpca/nrtl/tuvam.html.*

II. General Background on the Application

TUVAM submitted an application, dated August 29, 2019 (OSHA–2007–0043–0032), to expand their recognition to include eight additional test standards. OSHA staff performed detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the appropriate test standards found in TUVAM's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVAM'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
ASME A17.5	Elevators and Escalator Electrical Equipment.
UL 2738	Standard for Induction Power Transmitters and Receivers for Use With Low Energy Products.
UL 60745–2–1	Particular Requirements for Drills and Impact Drills.
UL 60745–2–3	Particular Requirements for Grinders, Polishers and Disk-Type Sanders.
UL 60745–2–5	Particular Requirements for Circular Saws.
UL 60745–2–14	Particular Requirements for Planers.
UL 60745–2–17	Particular Requirements for Routers and Trimmers.
UL 61800–5–1	Adjustable Speed Electrical Power Drive Systems—Part 5–1: Safety Requirements—Electrical, Thermal and Energy.

III. Preliminary Findings on the Application

TUVAM submitted an acceptable application for expansion of the NRTL scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that TUVAM can meet the requirements prescribed by 29 CFR 1910.7 for expanding their recognition to include the addition of these eight test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of TUVAM's application.

OSHA welcomes public comment as to whether TUVAM meets the requirements of 29 CFR 1910.7 for expansion of the recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, at the above address. These materials also are available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0043.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health as to whether to grant TUVAM's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

IV. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC, on January 28, 2021.

Amanda L. Edens,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–02211 Filed 2–2–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of TUV Rheinland of North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 18, 2021.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0042, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–2350. OSHA's TTY number is (877) 889–5627. Please note: While OSHA's docket office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the rulemaking record by express delivery, hand delivery and messenger service.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2007–0042). All comments, including any personal information you provide, such as social security numbers and date of birth, are placed in the public docket without change, and may be made available online at *https://www.regulations.gov.*

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. You may also contact Kevin Robinson, Director Office of Technical Programs and Coordination Activities (OTPCA) at the below address.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Applications for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for expansion of the current recognition as a NRTL. TUVRNA requests the addition of fourteen test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *https://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA currently has eight facilities (sites) recognized by OSHA for product testing and certification, with headquarters located at: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470. A complete list of TUVRNA sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/tuv.html.*

II. General Background on the Applications

TUVRNA submitted two applications, one dated April 28, 2017 (OSHA–2007–0042–0042) and another dated August 21, 2017 (OSHA–2007–0042–0043), to expand recognition to include the addition of fourteen test standards. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1 lists the appropriate test standards found in TUVRNA's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 9540	Standard for Energy Storage Systems and Equipment.
UL 283	Air Fresheners and Deodorizers.
UL 962	Household and Commercial Furnishings.
UL 2089	Vehicle Battery Adapters.
UL 2738	Standard for Induction Power and Transmitters and Receivers for Use with Low Energy Products.
UL 8750	Standard for Light Emitting Diode (LED) Equipment for Use in Lighting Products.
UL 8752	Organic Light Emitting Diode (LED) Panels.
UL 60950–21	Information Technology Equipment—Safety—Part 21: Remote Power Feeding.
UL 60950–22	Information Technology Equipment—Safety—Part 22: Equipment to be Installed Outdoors.
UL 60950–23	Information Technology Equipment—Safety—Part 23: Large Data Storage Equipment.
UL 61010–2–030	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–030: Particular Requirements for Testing and Measuring Circuits.
UL 61010–031	Electrical Equipment for Measurement, Control and Laboratory Use—Part 031: Safety Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.
UL 61010–2–81	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–081: Particular Requirements for Automatic and Semi-Automatic Laboratory Equipment for Analysis and other Purposes.
UL 61010–2–091	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–091: Particular Requirements for Cabinet X-Ray Systems.

III. Preliminary Finding on the Applications

TUVRNA submitted two acceptable applications for expansion of the scope of recognition. OSHA's review of the application files indicates that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of these fourteen test standards for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's applications.

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, listed in **ADDRESSES**. These materials also are available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0042.

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's applications for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on January 28, 2021.

Amanda L. Edens,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–02210 Filed 2–2–21; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0013]

SolarPTL, LLC.: Request for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SolarPTL, LLC. (PTL), requesting renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL).

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 18, 2021.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0013, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–2350. OSHA's TTY number is (877)

889–5627. *Please note:* While OSHA's docket office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the record by express delivery, hand delivery and messenger service.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2010–0013). All comments, including any personal information you provide, such as social security numbers and date of birth, are placed in the public docket without change, and may be made available online at *https://www.regulations.gov.*

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov.* All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. You may also contact Kevin Robinson, Director Office of Technical Programs and Coordination Activities (OTPCA) at the below address.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of a NRTL signifies that the organization meets the requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details the scope of recognition available at *https://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications by a NRTL for renewal of recognition following requirements in Appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, Appendix A, paragraph II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA, not less than nine months or no more than one year, before the expiration date of the current recognition. The submission includes a request for renewal and any additional information the NRTL wishes to submit to demonstrate continued compliance with the terms of the NRTL recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL's headquarters and key sites within the past 18 to 24 months, it will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces the preliminary decision to grant or deny renewal in the **Federal Register** and solicit comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

The current address of the PTL facility recognized by OSHA and included as part of the renewal request is: SolarPTL, 1107 West Fairmont Avenue, Tempe, Arizona 85252.

PTL initially received OSHA recognition as a NRTL in a **Federal Register** notice (76 FR 16452, March 23, 2011). PTL was previously recognized by OSHA as TUV Rheinland PTL, whose name was changed following a sale to SolarPTL in October 2018. PTL submitted a timely request for renewal, dated April 2, 2015 (OSHA–2010–0013), and retains their recognition pending OSHA's final decision in this renewal process. OSHA assessments of PTL during this recognition period (February 18–22, 2016; November 14–15, 2017; and January 30–31, 2019) identified nonconformities with 29 CFR 1910.7. Although PTL worked to resolve these nonconformities, it took several years for PTL to demonstrate compliance with 29 CFR 1910.7.

As a result of the nonconformities identified during OSHA's assessments of PTL during this recognition period, PTL must abide by the conditions noted below in addition to those conditions already required by 29 CFR 1910.7:

1. PTL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in their operations as a NRTL, and provide details of the change(s);

2. PTL must agree to increased OSHA oversight of their operations including:

(a) More frequent on-site assessments of PTL facilities; and

(b) PTL shall continue to provide OSHA with written notification of any new or revised NRTL certificates that are issued on or after December 14, 2017, within 7 days of issuing the certification. This notification shall include:

(a) Name and address of the applicant;

(b) Model number(s) for the certified products;

(c) PTL Certification number;

(d) PTL Project number;

(e) Name of PTL staff involved with the project; and

(f) Location where the product evaluation and testing took place.

3. Upon request, PTL must provide copies of the test data, certification report or other related information for new or revised certifications to OSHA.

II. Notice of Preliminary Findings

OSHA is providing notice that PTL is applying for renewal of recognition as a NRTL. This renewal covers PTL's existing NRTL scope of recognition. OSHA evaluated PTL's application for renewal and preliminarily determined that PTL can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. This information includes OSHA's audits of PTL's recognized NRTL site during this recognition period, and the satisfactory resolution of nonconformities with the requirements of 29 CFR 1910.7. This preliminary finding does not constitute an interim or temporary approval of the request.

OSHA welcomes public comment as to whether PTL meets the requirements of 29 CFR 1910.7 for renewal of their recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in PTL's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, at the above address; these materials also are available online at *https://www.regulations.gov* under Docket No. OSHA–2010–0013.

The NRTL Program staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary on whether to grant PTL's application for renewal. The Assistant Secretary will make the final decision on granting the application and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

III. Authority and Signature

Amanda L. Edens, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on January 28, 2021.

Amanda L. Edens,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–02209 Filed 2–2–21; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

[Docket No. 2021–1]

Announcement of Copyright Public Modernization Committee

AGENCY: Library of Congress.

ACTION: Notice of convening of IT modernization public stakeholder committee.

SUMMARY: The Library of Congress is convening a public committee to enhance communication and provide a public forum for the technology-related aspects of the U.S. Copyright Office's modernization initiative. At this time, the Library is announcing that it will accept applications from qualified members of the public to serve on this committee. The scope of contributions made by the committee are limited to the specific topics set forth in this notice. Membership will be on a volunteer basis, with the expectation of in-person or virtual participation at two open forums a year at the member's own expense.

DATES: The application period will be until March 15, 2021. The first meeting of the committee will be in early summer 2021, and meetings will continue twice a year for the duration of the Copyright Office IT modernization efforts, currently estimated to conclude at the end of fiscal year 2023. Meetings may be held by web conference as appropriate, and schedules are subject to change due to the evolving coronavirus pandemic.

FOR FURTHER INFORMATION CONTACT: The Library of Congress at *cpmc@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Library of Congress will form a public committee on Copyright Office information technology (IT) modernization. The committee will be managed by the Office of the Chief Information Officer (OCIO), with support from the U.S. Copyright Office and from other Library offices as necessary. The goal of the committee will be to expand and enhance communication with external stakeholders on IT modernization of Copyright Office systems and to provide an ongoing public forum for sharing information and answering questions related to this initiative.

II. Public Stakeholder Committee Subjects of Discussion

Members of the Copyright Public Modernization Committee will provide feedback to the Library on the technology-related aspects of the Copyright Office's modernization initiative, including both Copyright Office IT systems and broader Library IT systems that interface with and/or support Copyright Office operations.

III. Public Stakeholder Committee Application Process

Members of the public who seek to participate in the Copyright Public Modernization Committee should submit a current curriculum vitae and a statement of interest of no more than 1000 words addressing the questions identified below no later than March 15, 2021. Answers can be submitted via email at *cpmc@loc.gov.* If you are unable to access a computer or the internet, please contact the Library using the contact information above for special instructions. Individuals selected for participation will be notified directly by the Library not later than May 15, 2021. In order to accommodate the expected level of interest, the Library expects to assign no more than one representative per organization to the committee.

The public stakeholder committee will have a limited number of seats. Thus, the application and selection process is expected to be competitive. The Library will seek to select a membership that is representative of the broad and diverse Copyright Office stakeholder community. The areas of relevant expertise for membership include skill in communicating on complex technical issues; the ability to work collaboratively; and knowledge of technology relevant to Copyright Office services.

IV. Questions for Statement of Interest

For the Statement of Interest, the applicant need not address every subject identified below, but the Library requests that applicants clearly identify and separately address each numbered subject for which a response is submitted. Answers will be evaluated by the Library to select a committee with members that represent the broadest possible cross-section of Copyright Office stakeholders.

1. An important skill for members of the CPMC is the ability to communicate, whether orally or in writing, on complex technological issues, including describing their impact on the needs or interests of Copyright Office stakeholders. Please identify any relevant experience you have working and communicating on technological issues with these or any other relevant parties:

(a) Individual creators and copyright owners;

(b) Large corporate creators and companies that own or manage copyrights;

(c) Small-to-medium size enterprises that own or manage copyrights;

(d) Creators, copyright owners, or copyright users from the following sectors: photography, motion picture, musical works, sound recordings, graphic arts, publishing, software, and information technology;

(e) users of Copyright Office services, including but not limited to individuals or entities that register their works with the Office, record copyright-related documents with the Office, or benefit from or pay into the licensing systems administered by the Copyright Office;

(f) user interest groups, including researchers, universities, archives, and libraries; and

(g) representatives of the public and public interest groups (including organizations involved in issues related to open government, public government data and APIs, and government use of technology).

2. Another important skill for members of the CPMC is the ability to work collaboratively with others, including diverse stakeholders. Please describe any relevant past experience developing and maintaining relationships with a variety of individuals; communicating effectively about topics involving inter-dependencies, competing priorities, and diverse audiences/user groups; or reaching a consensus among diverse stakeholders with conflicting interests.

3. A key skill that the Library is seeking in members of the CPMC is knowledge of the technology relevant to Copyright Office IT modernization and the Office's recent initiatives. Please describe any relevant experience in the following sectors: government innovation and/or technology, copyright law and Copyright Office services, rights management, and the development and use of IT systems in library, cultural heritage, museum, creative industry or other settings.

4. Please describe your knowledge of user-centered strategies and design methods, including any experience applying iterative design principles to solving complex problems.

5. If your application is endorsed by other stakeholders or associations, please identify them.

Dated: January 28, 2021.

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2021–02194 Filed 2–2–21; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL SECURITY COMMISSION ON ARTIFICIAL INTELLIGENCE

[Docket No. 1–2021–02]

National Security Commission on Artificial Intelligence; Notice of Federal Advisory Committee Meeting

AGENCY: National Security Commission on Artificial Intelligence.

ACTION: Notice of Federal Advisory Committee virtual public meeting.

SUMMARY: The National Security Commission on Artificial Intelligence (the ''Commission'') is publishing this notice to announce that the following Federal Advisory Committee virtual public meeting will take place.

DATES: Wednesday, February 17, 2021, 1:00 p.m. to 4:00 p.m. Eastern Standard Time (EST).

FOR FURTHER INFORMATION CONTACT: Ms. Angela Ponmakha, 703–614–6379 (Voice), *nscai-dfo@nscai.gov. Mailing address:* Designated Federal Officer, National Security Commission on Artificial Intelligence, 2530 Crystal Drive, Box 45, Arlington, VA 22202. *website: https://www.nscai.gov.* The most up-to-date information about the meeting and the Commission can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY19 NDAA), Sec. 1051, Public Law 115–232, 132 Stat. 1636, 1962–65 (2018), created the Commission to ''consider the methods and means necessary to advance the development of artificial intelligence, machine learning, and associated technologies by the United States to comprehensively address the national security and defense needs of the United States.'' In a two-day meeting on January 25–26, 2021, the Commission deliberated on the draft Final Report and associated recommendations for Congress and the Executive Branch. The Commissioners then tasked the Commission staff with drafting specific implementation plans to accompany the Commission's Final Report. On February 17, 2021, Commissioners will meet and deliberate on these draft implementation plans.

Agenda: The meeting will begin on February 17, 2021 at 1:00 p.m. EST with opening remarks by the Designated Federal Officer, Ms. Angela Ponmakha; the Executive Director, Mr. Yll Bajraktari; the Commission Chair, Dr. Eric Schmidt; and the Commission Vice Chair, Mr. Robert Work. Commissioners from each of the Commission's lines of effort (LOEs) will present specific implementation plans associated with chapters of the Final Report for consideration by the entire Commission. The Commission's LOEs are: LOE 1—Invest in AI Research & Development and Software; LOE 2—Apply AI to National Security Missions; LOE 3—Train and Recruit AI Talent; LOE 4—Protect and Build Upon U.S. Technological Advantages & Hardware; LOE 5—Marshal Global AI Cooperation; and LOE 6—Ethics and Responsible AI.

The Commission will deliberate on the draft implementation plans and consider them for inclusion in the Commission's final report to Congress and the Administration. The meeting will adjourn at 4:00 p.m. EST.

Meeting Accessibility: Pursuant to Federal statutes and regulations (the FACA, the Sunshine Act, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the virtual meeting is open to the public February 17, 2021 from 1:00 p.m. to 4:00 p.m. EST. Members of the public wishing to receive a link to the live stream webcast for viewing and audio access to the virtual meeting should register on the Commission's website, *https://www.nscai.gov.* Registration will be available from February 8, 2021 through February 16, 2021. Members of the media should RSVP to the Commission's press office at *press@nscai.gov.*

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact the DFO, see the **FOR FURTHER INFORMATION CONTACT** section for contact information, no later than February 12, 2021, so that appropriate arrangements can be made.

Access to Records of the Meeting: Pursuant to FACA requirements, the meeting materials for the virtual meetings will be available for public inspection on the Commission's website at *https://www.nscai.gov* on February 12, 2021.

Written Statements: Written comments may be submitted to the DFO via email to: *nscai-dfo@nscai.gov* in either Adobe Acrobat or Microsoft Word format. The DFO will compile all written submissions and provide them to the Commissioners for consideration. Comments must be received by February 15 to be reviewed by Commissioners in advance of the meeting. Please note that all submitted comments will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Commission's website.

Dated: January 28, 2021.

Michael Gable,

Chief of Staff.

[FR Doc. 2021–02196 Filed 2–2–21; 8:45 am]

BILLING CODE 3610–Y8–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Merit Review Survey—2021 and 2023 Assessment of Applicant and Reviewer Experiences

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: Merit Review Survey—2021 & 2023 Assessment of Applicant and Reviewer Experiences.

OMB Number: 3145–NEW.

Type of Request: Request for approval to establish an information collection.

Proposed Project: The National Science Foundation (NSF) receives close to 50,000 proposals for funding annually, each of which undergoes a rigorous merit review process that is designed to ensure all proposals are fairly and thoroughly reviewed. The merit review process comprises three phases:

1. NSF announces funding opportunities on the NSF website and *Grants.gov*. Applicants prepare proposals in response to these opportunities and submit their proposals via FastLane (NSF's web-based system for proposal submission and review) or *Grants.gov*.

2. Proposals are assigned to the appropriate program(s) for review. Each proposal is assigned a Program Officer (PO) who selects external reviewers to evaluate the proposal according to the two NSF merit review criteria, Intellectual Merit and Broader Impacts. The Intellectual Merit criterion encompasses the potential to advance knowledge. The Broader Impacts criterion encompasses the potential to benefit society and contribute to the achievement of specific, desired societal outcomes. Programs may have additional review criteria particular to the goals and objectives of the program. The NSF guidelines for the selection of reviewers are designed to ensure selection of experts who can give program officers the proper information needed to make a recommendation in accordance with the merit review criteria. POs utilize the proposal's reference list, the investigator's suggested reviewers, and personal knowledge of individual reviewers to identify a pool of diverse experts with respect to type of organization represented, demographics, experience, and geographic balance, selecting appropriate reviewers with no apparent potential conflicts. Most proposals are reviewed by three to ten content expert reviewers who provide written feedback on the proposal through FastLane. POs synthesize reviewer comments and issue a recommendation to either decline or award funding based on reviewer feedback, panel discussions, the amount of available funding, and portfolio balances (*i.e.,* the diversity of a portfolio, including factors such as award type, career stage, demographic characteristics, geographic location, institution type, research topic, laboratory funding status, and intellectual risk). The proposal and PO recommendation is then forwarded to the appropriate Division Director or other NSF official for additional review and action to either decline or award.

3. Each proposal recommended for award undergoes an administrative review conducted by NSF's Office of Budget, Finance, and Award Management. If it passes this review, the proposal is awarded.

Through this review process, NSF aims to identify the highest quality proposals to receive funding. The success of this process hinges on the assumptions that applicants will continue to submit to NSF their ideas for cutting-edge research and that experts in their respective fields will continue to provide high-quality reviews of those proposals.

The goal of this data collection is to assess the experiences of applicants and reviewers and their satisfaction with NSF's merit review process. The data collection for which this OMB approval is requested includes a Web-based survey that will be administered to all applicants and reviewers who participated in the merit review process between fiscal years (FY) 2018 and FY 2020 (2021 survey) and between FY 2020 and FY 2022 (2023 survey).

The specific research objectives are to—

1. Assess applicant and reviewer perceptions of, and satisfaction with, various aspects of the merit review process.
2. Document the time burden the merit review process places on reviewers and applicants.
3. Examine applicant and reviewer perceptions of the quality of reviews and of proposals.
4. Assess the changes in applicant and reviewer perceptions of burden, satisfaction, and quality between the 2019 and 2021 surveys and the 2021 and 2023 surveys.
5. Examine the variation of applicant and reviewer perception of satisfaction, burden, and quality by key population subgroups, including race/ethnicity, gender, and disability.
6. Describe the extent to which NSF's reviewer orientation video is correlated with awareness of different types of cognitive biases and the use of strategies to reduce cognitive bias and to provide constructive feedback.
7. Describe the extent to which the elimination of annual proposal deadlines affected reviewer and applicant burden, perceptions of proposal and review quality, and satisfaction with the merit review process.
8. Describe applicants and reviewers experiences with student support programs as well as what NSF application and funding support is associated with the receipt of financial support from NSF as an undergraduate or graduate student.

Data from the survey will be used to improve NSF's implementation of the merit review process.

Use of the information: The primary purpose of collecting this information is program evaluation. The data collected will enable NSF to assess the satisfaction, including perceptions of burden and quality, of applicants and reviewers who participate in the merit review process in order to monitor and improve the program and assess its implementation. Findings will inform continual improvement activities related to the merit review process.

Expected respondents: All applicants who have submitted proposals and reviewers who have reviewed NSF proposals between FY 2018 and 2020 will be invited to participate in the 2021 survey and comparable individuals who participated between FY 2020 and FY 2022 will be invited to participate in the 2023 survey. This is estimated to be approximately 87,000 individuals per survey round.

Average time per reporting: The online survey is comprised primarily of close-ended questions and is designed to be completed by respondents in approximately 20 minutes.

Frequency: Eligible applicants and reviewers will be asked to the complete the 2021 Merit Review survey one time in fall 2021. For the 2023 survey, eligible applicants and reviewers will be asked to complete the survey one time in fall 2023.

Estimate of burden: It is estimated the survey will require approximately 20 minutes (on average) to complete. The anticipated universe size for each survey cycle is 87,000 individuals, which includes all applicants who submitted proposals and all reviewers between FY 2018 and FY 2020 (for the 2021 survey) and between FY 2020 and FY 2022 (for the 2023 survey). The estimated survey response rate for each the 2021 and 2023 survey rounds is 40 percent. Therefore, the total burden is 23,200 hours; this is a respondent burden of 11,600 hours per survey year (2021 and 2023).

Based on 2019 merit review survey data, it is anticipated that most survey respondents will be working at an academic institution, likely in a teaching and/or research capacity. Therefore, for the purpose of burden estimates, we have used the annual mean wage for postsecondary teachers from Bureau of Labor Statistics, which is $79,540.[1] Assuming a 40-hour workweek over the course of 52 weeks annually, the hourly wage for this occupation is approximately $38.00. Therefore, the overall cost to survey respondents for each survey year (2021 and 2023) would be approximately $440,800 (11,600 burden hours × $38.00 per hour), as shown in table A.12.1 below.

TABLE A.12.1—ESTIMATE OF RESPONDENT BURDEN AND COST BY YEAR

Year	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours	Average hourly wage	Total cost
2021	34,800	1	0.33333	11,600	$38	$440,800
2022	0	0	0	0	0	0
2023	34,800	1	0.33333	11,600	38	440,800
Total	69,600	1	0.33333	23,200	38	881,600

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 29, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2021–02240 Filed 2–2–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 11006398; NRC–2020–0249]

U.S. Department of Energy National Nuclear Security Administration

AGENCY: Nuclear Regulatory Commission.

ACTION: Export license application; opportunity to provide comments, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received an application for an export license (XSNM3819) requested by U.S Department of Energy National Nuclear Security Administration (DOE/NNSA). On September 10, 2020, DOE/NNSA filed an application with the NRC seeking approval for a license to export high enriched uranium to France.

DATES: Submit comments by March 5, 2021. A request for a hearing or a petition for leave to intervene must be filed by March 5, 2021.

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–2020–0249. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: hearing.docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

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

FOR FURTHER INFORMATION CONTACT: Janice Owens, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

[1] Source: *https://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm.*

0001; telephone: 301–287–9096, email: *Janice.Owens@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC–2020–0249 or Docket No. 11006398 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–2020–0249.
- *NRC's Public Website:* Go to *https://www.nrc.gov* and search for XSNM3819, Docket No. 11006398, or Docket ID NRC–2020–0249.
- *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 export license application from DOE/NNSA is available in ADAMS under Accession No. ML20262H100.
- *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

Please include Docket ID NRC–2020–0249 or Docket No. 11006398 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 September 18, 2020, NRC received an application from DOE/NNSA requesting a specific license (XSNM3819) to export high enriched uranium in the form of broken metals to France for ultimate use as reactor fuel (ADAMS Accession No. ML20262H100).

In accordance with paragraph 110.70(b) of title 10 of the *Code of Federal Regulations* (10 CFR) the NRC is providing notice of the receipt of the application submitted; providing the opportunity to submit written comments concerning the application; and providing the opportunity to request a hearing or petition for leave to intervene, for a period of 30 days after publication of this notice in the **Federal Register**. In accordance with 10 CFR 110.89(b), a hearing request or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520. Hearing requests and intervention petitions must include the information specified in 10 CFR 110.82(b).

A request for hearing or petition for leave to intervene shall be filed In accordance with 10 CFR 110.89(a). As provided in section 110.89(a), a request for hearing or petition for leave to intervent may be filed with the Commission by delivery or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or by electronic means in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/esubmittals.htm.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

The information concerning this application for an export license follows.

NRC EXPORT LICENSE APPLICATION

Application Information	
Name of Applicant	U.S Department of Energy National Nuclear Security Administration (DOE/NNSA)
Date of Application	September 10, 2020
Date Received	September 18, 2020
Application No.	XSNM3819
Docket No.	11006398
ADAMS Accession No.	ML20262H100
Description of Material	
Material Type	High enriched uranium in the form of broken metal.
Total Quantity	Up to 121.16 kilograms of uranium-235 contained in a maximum of 130.0 kilograms of uranium enriched to a maximum of 93.20 weight percent.
End Use	Reactor reload fuel.

NRC EXPORT LICENSE APPLICATION—Continued

Country of Destination	France.

Dated: January 29, 2021.

For the Nuclear Regulatory Commission.

David L. Skeen,

Deputy Director, Office of International Programs.

[FR Doc. 2021–02249 Filed 2–2–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0233]

Report on Waste Burial Charges; Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–1307, Revision 18, ''Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities.'' This report, which is revised periodically, explains the formula acceptable to the NRC for determining the minimum decommissioning fund requirements for nuclear power reactor licensees, as required by NRC regulations. Specifically, this report provides the adjustment factor and updates the values for the labor, energy, and waste burial escalation factors of the minimum formula.

DATES: NUREG–1307, Revision 18, is available on February 3, 2021.

ADDRESSES: Please refer to NRC–2020–0233 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0233. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@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–1307, Revision 18, ''Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities,'' is available in ADAMS under Accession No. ML21027A302.

• *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.

FOR FURTHER INFORMATION CONTACT: Emil Tabakov, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6814, email: *Emil.Tabakov@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

Pursuant to section 50.75 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Reporting and Recordkeeping for Decommissioning Planning,'' the NRC requires nuclear power reactor licensees to adjust annually, in current year dollars, their estimate of the cost to decommission their plants. The annual updates are part of the process for providing reasonable assurance that adequate funds for decommissioning will be available when needed.

Revision 18 of NUREG–1307, ''Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities,'' modifies the previous revision to this report issued in February 2019 (ADAMS Accession No. ML19037A405) and incorporates updates to the adjustment factor and to the labor, energy, and waste burial escalation factors of the NRC minimum decommissioning fund formula. Due to modest pricing changes in low-level waste burial charges at the nation's four low-level waste disposal facilities, the minimum decommissioning fund formula amounts calculated by licensees, based on revised low-level waste burial factors presented in this report, will likely reflect minimum decommissioning fund requirements (on average) that are similar to or slightly lower than those reported by licensees in 2019.

II. Additional Information

The NRC published a notice in the **Federal Register** on November 17, 2020 (85 FR 73299) requesting public comment on draft NUREG–1307, Revision 18. The public comment period closed on December 17, 2020. The NRC received four public comments. The public comments and the NRC staff's responses are presented in a comment resolution matrix available in ADAMS under Accession No. ML21008A253. The staff considered the public comments received on the draft document in preparing final NUREG–1307, Revision 18.

Dated: January 28, 2021.

For the Nuclear Regulatory Commission.

Richard H. Turtil,

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

[FR Doc. 2021–02189 Filed 2–2–21; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Nanotechnology Initiative Meetings

ACTION: Notice of Public Meetings.

SUMMARY: The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will facilitate stakeholder discussions of targeted nanotechnology topics through workshops, webinars, and Community of Interest meetings between the publication date of this Notice and December 31, 2021.

DATES: The NNCO will hold one or more workshops, webinars, networks, and Community of Interest teleconferences between the publication date of this Notice and December 31, 2021.

ADDRESS: Event information, including addresses, will be posted on *nano.gov.* For information about upcoming workshops and webinars, please visit *https://www.nano.gov/events/meetings-*

workshops and *https://www.nano.gov/PublicWebinars.* For more information on the Communities of Interest, please visit *https://www.nano.gov/Communities.*

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Patrice Pages at *info@nnco.nano.gov* or 202–517–1041.

SUPPLEMENTARY INFORMATION: These public meetings address the charge in the 21st Century Nanotechnology Research and Development Act for NNCO to provide ''for public input and outreach . . . by the convening of regular and ongoing public discussions.'' Workshop and webinar topics may include strategic planning; technical subjects; environmental, health, and safety issues related to nanomaterials (nanoEHS); business case studies; or other areas of potential interest to the nanotechnology community. Areas of focus for the Communities of Interest may include research on nanoEHS; nanotechnology education; nanomedicine; nanomanufacturing; or other areas of potential interest to the nanotechnology community. The Communities of Interest are not intended to provide any government agency with advice or recommendations; such action is outside of their purview.

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Meeting Accommodations: Individuals requiring special accommodation to access any of these public events should contact *info@nnco.nano.gov* at least 10 business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 29, 2021.

Stacy Murphy,

Operations Manager, White House Office of Science and Technology Policy.

[FR Doc. 2021–02224 Filed 2–2–21; 8:45 am]

BILLING CODE 3270–F1–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91006; File No. SR–CboeBYX–2021–005]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's CAT Compliance Rule To Be Consistent With a Conditional Exemption Granted by the SEC From Certain Allocation Reporting Requirements

January 28, 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 15, 2021, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''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 BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with a conditional exemption granted by the Securities and Exchange Commission (''Commission'') from certain allocation reporting requirements set forth in Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe BYX Exchange, Inc.

* * * * *

Rule 4.5. Consolidated Audit Trail—Definitions

For purposes of Rules 4.5 through 4.16:

* * * * *

(a)–(b) No change.

(c) ''Allocation'' means (1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (e.g., subaccount allocations, delivery versus payment (''DVP'') allocations).

(d) [(c)] ''Allocation Report'' means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/*contracts* are allocated and provides *(1)* the security that has been allocated;[,] *(2)* the identifier of the firm reporting the allocation;[,] *(3)* the price per share*/contract* of shares*/contracts* allocated;[,] *(4)* the side of shares*/contracts* allocated;[,] *(5)* the number of shares*/contracts* allocated to each account;[,] [and] *(6)* the time of the allocation; *(7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (e.g., option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled;* provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

(e) [(d)] No change.
(f) [(e)] No change.
(g) [(f)] No change.
(h) [(g)] No change.
(i) [(h)] No change.
(j) [(i)] No change.
(k) [(j)] No change.

(l) ''Client Account'' means, for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.

(m) [(k)] No change.
(n) [l] No change.
(o) [m] No change.
(p) [n] No change.
(q) [o] No change.
(r) [p] No change.
(s) [q] No change.
(t) [r] No change.
(u) [s] No change.
(v) [t] No change.
(w) [u] No change.
(x) [v] No change.
(y) [w] No change.
(z) [x] No change.
(aa) [y] No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

(bb) [z] No change.
(cc) [aa] No change.
(dd) [bb] No change.
(ee) [cc] No change.
(ff) [dd] No change.
(gg) [ee] No change.
(hh) [ff] No change.
(ii) [gg] No change.
(jj) [hh] No change.
(kk) [ii] No change.
(ll) [jj] No change.
(mm) [kk] No change.
(nn) [ll] No change.
(oo) [mm] No change.
(pp) [nn] No change.
(qq) [oo] No change.
(rr) [pp] No change.

* * * * *

Rule 4.7. Consolidated Audit Trail—Industry Member Data Reporting

(a) Recording and Reporting Industry Member Data

(1) No change.

(2) Subject to *sub*paragraph *(a)*(3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and, collectively with the information referred to in [Rule 4.7] *subparagraph* (a)(1), ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

(A) if the order is executed, in whole or in part:

[(i) An Allocation Report;]

(i) [(ii)] SRO-Assigned Market Participant Identifier of the clearing broker [or prime broker], if applicable; and

(ii) [(iii)] CAT-Order-ID of any contra-side order(s);

(B)–(E) No change.

(F) an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the Compliance Rule regarding the CAT NMS Plan to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report;[5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report.

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which execute shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] See Letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparencyreporting/trade-reporting-faq*.

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearingservices/equities-tradecapture/correspondent-clearing*.

Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system);[11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other nonreportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 4.5.[13] Proposed paragraph (c) of Rule 4.5 would define a ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The Commission stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Rule 4.5(c) to reflect the requirements of the Allocation Exemption. Rule 4.5(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 4.5(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the Commission stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 4.5(c) (to be renumbered as Rule 4.5(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 4.5(c) (to be renumbered as Rule 4.5(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

> (6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 4.7(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 4.7(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 4.5 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

[14] The Exchange proposes to renumber Rule 4.7(a)(2)(A)(ii) and (iii) as Rules 4.7(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 4.7(a)(2)(A)(i). The Exchange also proposes to make nonsubstantive changes to the language in Rule 4.7(a)(2)(A).

perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed 4.7(a)(2)(F) to the Compliance Rule. Proposed Rule 4.7(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 4.7(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 4.5(l). Proposed Rule 4.5(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 4.7(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 4.7(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] 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)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that this proposal is consistent with the Act because it is consistent with, and

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the Commission noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [19] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [20] and Rule 19b–4(f)(6) [21] 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–CboeBYX–2021–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2021–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2021–005, and should be submitted on or before February 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02184 Filed 2–2–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91007; File No. SR–CboeEDGX–2021–008]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's CAT Compliance Rule To Be Consistent With a Conditional Exemption Granted by the SEC From Certain Allocation Reporting Requirements

January 28, 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 15, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''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. (the ''Exchange'' or ''EDGX'') proposes to amend the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT

[19] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

NMS Plan'' or ''Plan'') [3] to be consistent with a conditional exemption granted by the Securities and Exchange Commission (''Commission'') from certain allocation reporting requirements set forth in Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 4.5. Consolidated Audit Trail—Definitions

For purposes of Rules 4.5 through 4.16:

* * * * *

(a)–(b) No change.

(c) ''Allocation'' means (1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (e.g., subaccount allocations, delivery versus payment (''DVP'') allocations).

(d) [(c)] ''Allocation Report'' means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/*contracts* are allocated and provides *(1)* the security that has been allocated*;*[,] *(2)* the identifier of the firm reporting the allocation*;*[,] *(3)* the price per share*/contract* of shares/*contracts* allocated*;*[,] *(4)* the side of shares/*contracts* allocated*;*[,] *(5)* the number of shares/*contracts* allocated to each account*;*[,] [and] *(6)* the time of the allocation; *(7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (e.g., option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled;* provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

(e) [(d)] No change.
(f) [(e)] No change.
(g) [(f)] No change.
(h) [(g)] No change.
(i) [(h)] No change.
(j) [(i)] No change.
(k) [(j)] No change.

(l) ''Client Account'' means, for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.

(m) [(k)] No change.
(n) [l] No change.
(o) [m] No change.
(p) [n] No change.
(q) [o] No change.
(r) [p] No change.
(s) [q] No change.
(t) [r] No change.
(u) [s] No change.
(v) [t] No change.
(w) [u] No change.
(x) [v] No change.
(y) [w] No change.
(z) [x] No change.
(aa) [y] No change.
(bb) [z] No change.
(cc) [aa] No change.
(dd) [bb] No change.
(ee) [cc] No change.
(ff) [dd] No change.
(gg) [ee] No change.
(hh) [ff] No change.
(ii) [gg] No change.
(jj) [hh] No change.
(kk) [ii] No change.
(ll) [jj] No change.
(mm) [kk] No change.
(nn) [ll] No change.
(oo) [mm] No change.
(pp) [nn] No change.
(qq) [oo] No change.
(rr) [pp] No change.

* * * * *

Rule 4.7. Consolidated Audit Trail—Industry Member Data Reporting

(a) Recording and Reporting Industry Member Data

(1) No change.

(2) Subject to *sub*paragraph *(a)*(3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and, collectively with the information referred to in [Rule 4.7] *subparagraph* (a)(1), ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

(A) if the order is executed, in whole or in part:

[(i) An Allocation Report;]

(i) [(ii)] SRO-Assigned Market Participant Identifier of the clearing broker [or prime broker], if applicable; and

(ii) [(iii)] CAT-Order-ID of any contra-side order(s);

(B)–(E) No change.

(F) an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.

* * * * *

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 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 this proposed rule change is to amend the Compliance Rule regarding the CAT NMS Plan to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report;[5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which execute shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and

[6] See Letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparencyreporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearingservices/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other nonreportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 4.5.[13] Proposed paragraph (c) of Rule 4.5 would define a ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The Commission stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Rule 4.5(c) to reflect the requirements of the Allocation Exemption. Rule 4.5(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 4.5(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the Commission stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 4.5 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

Eligible Securities. Therefore, the Exchange proposes to amend Rule 4.5(c) (to be renumbered as Rule 4.5(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 4.5(c) (to be renumbered as Rule 4.5(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

(6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity); and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 4.7(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 4.7(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

[14] The Exchange proposes to renumber Rule 4.7(a)(2)(A)(ii) and (iii) as Rules 4.7(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 4.7(a)(2)(A)(i). The Exchange also proposes to make nonsubstantive changes to the language in Rule 4.7(a)(2)(A).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed 4.7(a)(2)(F) to the Compliance Rule. Proposed Rule 4.7(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 4.7(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 4.5(l). Proposed Rule 4.5(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 4.7(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned

Market Participant Identifier of the prime broker. Rule 4.7(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

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.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] 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) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the Commission noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [19] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [20] and Rule 19b–4(f)(6) [21] 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–2021–008 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.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

All submissions should refer to File Number SR–CboeEDGX–2021–008. 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–2021–008, and should be submitted on or before February 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02185 Filed 2–2–21; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Each Tuesday of the month of February 2021 at 5:00 p.m.

PLACE: The meetings will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: The meetings 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 meetings. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of 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:

Matters relating to examinations and 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: February 1, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–02373 Filed 2–1–21; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91009; File No. SR–CboeEDGA–2021–005]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's CAT Compliance Rule To Be Consistent With a Conditional Exemption Granted by the SEC From Certain Allocation Reporting Requirements

January 28, 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 15, 2021, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with a conditional exemption granted by the Securities and Exchange Commission (''Commission'') from certain allocation reporting requirements set forth in Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe EDGA Exchange, Inc.

* * * * *

Rule 4.5. Consolidated Audit Trail—Definitions

For purposes of Rules 4.5 through 4.16:

* * * * *

(a)–(b) No change.

(c) ''Allocation'' means (1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (e.g., subaccount allocations, delivery versus payment (''DVP'') allocations).

(d) [(c)] ''Allocation Report'' means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/*contracts* are allocated and provides *(1)* the security that has been allocated;[,] *(2)* the identifier of the firm reporting the allocation;[,] *(3)* the price per share/*contract* of shares/*contracts* allocated;[,] *(4)* the side of shares/*contracts* allocated;[,] *(5)* the number of shares/*contracts* allocated to each account;[,] [and] *(6)* the time of the allocation; *(7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the*

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (e.g., option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

(e) [(d)] No change.
(f) [(e)] No change.
(g) [(f)] No change.
(h) [(g)] No change.
(i) [(h)] No change.
(j) [(i)] No change.
(k) [(j)] No change.
(l) "*Client Account*" *means, for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.*
(m) [(k)] No change.
(n) [l] No change.
(o) [m] No change.
(p) [n] No change.
(q) [o] No change.
(r) [p] No change.
(s) [q] No change.
(t) [r] No change.
(u) [s] No change.
(v) [t] No change.
(w) [u] No change.
(x) [v] No change.
(y) [w] No change.
(z) [x] No change.
(aa) [y] No change.
(bb) [z] No change.
(cc) [aa] No change.
(dd) [bb] No change.
(ee) [cc] No change.
(ff) [dd] No change.
(gg) [ee] No change.
(hh) [ff] No change.
(ii) [gg] No change.
(jj) [hh] No change.
(kk) [ii] No change.
(ll) [jj] No change.
(mm) [kk] No change.
(nn) [ll] No change.
(oo) [mm] No change.
(pp) [nn] No change.
(qq) [oo] No change.
(rr) [pp] No change.

* * * * *

Rule 4.7. Consolidated Audit Trail—Industry Member Data Reporting

(a) Recording and Reporting Industry Member Data

(1) No change.

(2) Subject to *sub*paragraph *(a)*(3) below, each Industry Member shall record and report to the Central Repository the following, as applicable ("Received Industry Member Data" and, collectively with the information referred to in [Rule 4.7] *subparagraph* (a)(1), "Industry Member Data")) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

(A) if the order is executed, in whole or in part:

[(i) An Allocation Report;]

(i) [(ii)] SRO-Assigned Market Participant Identifier of the clearing broker [or prime broker], if applicable; and

(ii) [(iii)] CAT-Order-ID of any contra-side order(s);

(B)–(E) No change.

(F) an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), 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 this proposed rule change is to amend the Compliance Rule regarding the CAT NMS Plan to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the "Allocation Alternative").

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report;[5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan ("Exemption Request").[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a "client account" would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an "Allocation" would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment ("DVP") allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account

[5] Section 1.1 of the CAT NMS Plan defines an "Allocation Report" as "a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which execute shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions."

[6] See Letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the "Exemption Request").

that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional

[7] "A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership." *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparencyreporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearingservices/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other nonreportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 4.5.[13] Proposed paragraph (c) of Rule 4.5 would define a ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The Commission stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Rule 4.5(c) to reflect the requirements of the Allocation Exemption. Rule 4.5(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 4.5(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the Commission stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 4.5(c) (to be renumbered as Rule 4.5(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 4.5(c) (to be renumbered as Rule 4.5(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

> (6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 4.5 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 4.7(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 4.7(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed 4.7(a)(2)(F) to the Compliance Rule. Proposed Rule 4.7(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 4.7(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 4.5(l). Proposed Rule 4.5(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 4.7(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 4.7(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information

[14] The Exchange proposes to renumber Rule 4.7(a)(2)(A)(ii) and (iii) as Rules 4.7(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 4.7(a)(2)(A)(i). The Exchange also proposes to make nonsubstantive changes to the language in Rule 4.7(a)(2)(A).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

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.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] 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) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the Commission noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [19] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [20] and Rule 19b–4(f)(6) [21] 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–CboeEDGA–2021–005 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–CboeEDGA–2021–005. 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–CboeEDGA–2021–005, and should be submitted on or before February 24, 2021.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02187 Filed 2–2–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91010; File No. SR–CboeBZX–2021–013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's CAT Compliance Rule To Be Consistent With a Conditional Exemption Granted by the SEC From Certain Allocation Reporting Requirements

January 28, 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 15, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''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. (the ''Exchange'' or ''BZX'') proposes to amend the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with a conditional exemption granted by the Securities and Exchange Commission (''Commission'') from certain allocation reporting requirements set forth in Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 4.5. Consolidated Audit Trail—Definitions

For purposes of Rules 4.5 through 4.16:

* * * * *

(a)–(b) No change.

(c) ''Allocation'' means (1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (e.g., subaccount allocations, delivery versus payment (''DVP'') allocations).

(d) [(c)] ''Allocation Report'' means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/*contracts* are allocated and provides *(1)* the security that has been allocated;[,] *(2)* the identifier of the firm reporting the allocation;[,] *(3)* the price per share/*contract* of shares/*contracts* allocated;[,] *(4)* the side of shares/*contracts* allocated;[,] *(5)* the number of shares/*contracts* allocated to each account;[,] [and] *(6)* the time of the allocation; *(7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (e.g., option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled;* provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

(e) [(d)] No change.
(f) [(e)] No change.
(g) [(f)] No change.
(h) [(g)] No change.
(i) [(h)] No change.
(j) [(i)] No change.
(k) [(j)] No change.

(l) ''Client Account'' means, for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.

(m) [(k)] No change.
(n) [l] No change.
(o) [m] No change.
(p) [n] No change.
(q) [o] No change.
(r) [p] No change.
(s) [q] No change.
(t) [r] No change.
(u) [s] No change.
(v) [t] No change.
(w) [u] No change.
(x) [v] No change.
(y) [w] No change.
(z) [x] No change.
(aa) [y] No change.
(bb) [z] No change.
(cc) [aa] No change.
(dd) [bb] No change.
(ee) [cc] No change.
(ff) [dd] No change.
(gg) [ee] No change.
(hh) [ff] No change.
(ii) [gg] No change.
(jj) [hh] No change.
(kk) [ii] No change.
(ll) [jj] No change.
(mm) [kk] No change.
(nn) [ll] No change.
(oo) [mm] No change.
(pp) [nn] No change.
(qq) [oo] No change.
(rr) [pp] No change.

* * * * *

Rule 4.7. Consolidated Audit Trail—Industry Member Data Reporting

(a) Recording and Reporting Industry Member Data

(1) No change.

(2) Subject to *sub*paragraph *(a)*(3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and, collectively with the information referred to in [Rule 4.7] *subparagraph* (a)(1), ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

(A) if the order is executed, in whole or in part:

[(i) An Allocation Report;]

(i) [(ii)] SRO-Assigned Market Participant Identifier of the clearing broker [or prime broker], if applicable; and

(ii) [(iii)] CAT-Order-ID of any contra-side order(s);

(B)–(E) No change.

(F) an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.

* * * * *

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

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

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 this proposed rule change is to amend the Compliance Rule regarding the CAT NMS Plan to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report;[5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which execute shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] See Letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparencyreporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearingservices/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system);[11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c);[12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other nonreportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 4.5.[13] Proposed paragraph (c) of Rule 4.5 would define a ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 4.5 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The Commission stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Rule 4.5(c) to reflect the requirements of the Allocation Exemption. Rule 4.5(c) defines the term ''Allocation Report'' to mean:

> a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 4.5(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the Commission stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 4.5(c) (to be renumbered as Rule 4.5(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 4.5(c) (to be renumbered as Rule 4.5(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

> (6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 4.7(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 4.7(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed 4.7(a)(2)(F) to the Compliance Rule. Proposed Rule 4.7(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

[14] The Exchange proposes to renumber Rule 4.7(a)(2)(A)(ii) and (iii) as Rules 4.7(a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 4.7(a)(2)(A)(i). The Exchange also proposes to make nonsubstantive changes to the language in Rule 4.7(a)(2)(A).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 4.7(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 4.5(l). Proposed Rule 4.5(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 4.7(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 4.7(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there is one, that is associated with each account.

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.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] 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) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the Commission noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [19] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

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.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 [20] and Rule 19b–4(f)(6) [21] 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–2021–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2021–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2021–013, and should be submitted on or before February 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02188 Filed 2–2–21; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91008; File No. SR–CBOE–2021–007]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's CAT Compliance Rule To Be Consistent With a Conditional Exemption Granted by the SEC From Certain Allocation Reporting Requirements

January 28, 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 15, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''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 Chapter 7, Section B of the Rules, which is the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') [3] to be consistent with a conditional exemption granted by the Securities and Exchange Commission (''Commission'') from certain allocation reporting requirements set forth in Section 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Allocation Exemption'').[4] The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 7.20. Definitions

For purposes of this Section B to Chapter 7:

* * * * *

(a)–(b) No change.

(c) ''Allocation'' means (1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (e.g., subaccount allocations, delivery versus payment (''DVP'') allocations).

(d) [(c)] ''Allocation Report'' means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/*contracts* are allocated and provides *(1)* the security that has been allocated*;*[,] *(2)* the identifier of the firm reporting the allocation*;*[,] *(3)* the price per share*/contract* of shares*/contracts* allocated*;*[,] *(4)* the side of shares*/contracts* allocated*;*[,] *(5)* the number of shares*/contracts* allocated to each account*;*[,] [and] *(6)* the time of the allocation; *(7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] *See* Securities Exchange Act Rel. No. 90223 (October 19, 2020), 85 FR 67576 (October 23, 2020) (''Allocation Exemptive Order'').

account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (e.g., option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

(e) [(d)] No change.
(f) [(e)] No change.
(g) [(f)] No change.
(h) [(g)] No change.
(i) [(h)] No change.
(j) [(i)] No change.
(k) [(j)] No change.
(l) ''Client Account'' means, for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.
(m) [(k)] No change.
(n) [l] No change.
(o) [m] No change.
(p) [n] No change.
(q) [o] No change.
(r) [p] No change.
(s) [q] No change.
(t) [r] No change.
(u) [s] No change.
(v) [t] No change.
(w) [u] No change.
(x) [v] No change.
(y) [w] No change.
(z) [x] No change.
(aa) [y] No change.
(bb) [z] No change.
(cc) [aa] No change.
(dd) [bb] No change.
(ee) [cc] No change.
(ff) [dd] No change.
(gg) [ee] No change.
(hh) [ff] No change.
(ii) [gg] No change.
(jj) [hh] No change.
(kk) [ii] No change.
(ll) [jj] No change.
(mm) [kk] No change.
(nn) [ll] No change.
(oo) [mm] No change.
(pp) [nn] No change.
(qq) [oo] No change.
(rr) [pp] No change.

* * * * *

Rule 7.22. Industry Member Data Reporting

(a) Recording and Reporting Industry Member Data

(1) No change.

(2) Subject to subparagraph (a)(3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and, collectively with the information referred to in subparagraph (a)(1), ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

(A) if the order is executed, in whole or in part:

[(i) Allocation Report;]

(i) [(ii)] SRO-Assigned Market Participant Identifier of the clearing broker [or prime broker], if applicable; and

(ii) [(iii)] CAT-Order-ID of any contra-side order(s);

(B)–(E) No change.

(F) an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.

* * * * *

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 purpose of this proposed rule change is to amend the Compliance Rule regarding the CAT NMS Plan to be consistent with the Allocation Exemption. The Commission granted the relief conditioned upon the Participants' adoption of Compliance Rules that implement the alternative approach to reporting allocations to the Central Repository described in the Allocation Exemption (referred to as the ''Allocation Alternative'').

(1) Request for Exemptive Relief

Pursuant to Section 6.4(d)(ii)(A) of the CAT NMS Plan, each Participant must, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if the order is executed, in whole or in part: (1) An Allocation Report; [5] (2) the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and the (3) CAT-Order-ID of any contra-side order(s). Accordingly, the Exchange and the other Participants implemented Compliance Rules that require their Industry Members that are executing brokers to submit to the Central Repository, among other things, Allocation Reports and the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.

On August 27, 2020, the Participants submitted to the Commission a request for an exemption from certain allocation reporting requirements set forth in Sections 6.4(d)(ii)(A)(1) and (2) of the CAT NMS Plan (''Exemption Request'').[6] In the Exemption Request, the Participants requested that they be permitted to implement the Allocation Alternative, which, as noted above, is an alternative approach to reporting allocations to the Central Repository. Under the Allocation Alternative, any Industry Member that performs an allocation to a client account would be required under the Compliance Rule to submit an Allocation Report to the Central Repository when shares/contracts are allocated to a client account regardless of whether the Industry Member was involved in executing the underlying order(s). Under the Allocation Alternative, a ''client account'' would be any account that is not owned or controlled by the Industry Member.

In addition, under the Allocation Alternative, an ''Allocation'' would be defined as: (1) The placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations). Pursuant to this definition and the proposed Allocation Alternative, an Industry Member that performs an Allocation to an account that is not a client account, such as proprietary accounts and events including step outs,[7] or correspondent

[5] Section 1.1 of the CAT NMS Plan defines an ''Allocation Report'' as ''a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which execute shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.''

[6] See Letter from the Participants to Vanessa Countryman, Secretary, Commission, dated August 27, 2020 (the ''Exemption Request'').

[7] ''A step-out allows a broker-dealer to allocate all or part of a client's position from a previously

Continued

flips,[8] would not be required to submit an Allocation Report to the Central Repository for that allocation, but could do so on a voluntary basis. Industry Members would be allowed to report Allocations to accounts other than client accounts; in that instance, such Allocations must be marked as Allocations to accounts other than client accounts.

(A) Executing Brokers and Allocation Reports

To implement the Allocation Alternative, the Participants requested exemptive relief from Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members that are executing brokers, who do not perform Allocations, to record and report to the Central Repository, if the order is executed, in whole or in part, an Allocation Report. Under the Allocation Alternative, when an Industry Member other than an executing broker (*e.g.,* a prime broker or clearing broker) performs an Allocation, that Industry Member would be required to submit the Allocation Report to the Central Repository. When an executing broker performs an Allocation for an order that is executed, in whole or in part, the burden of submitting an Allocation Report to the Central Repository would remain with the executing broker under the Allocation Alternative. In certain circumstances this would result in multiple Allocation Reports—the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

The Participants stated that granting exemptive relief from submitting Allocation Reports for executing brokers who do not perform an Allocation, and requiring the Industry Member other than the executing broker that is performing the Allocation to submit such Allocation Reports, is consistent with the basic approach taken by the Commission in adopting Rule 613 under the Exchange Act. Specifically, the Participants stated that they believe that the Commission sought to require each broker-dealer and exchange that touches an order to record the required data with respect to actions it takes on the order.[9] Without the requested exemptive relief, executing brokers that do not perform Allocations would be required to submit Allocation Reports. In addition, the Participants stated that, because shares/contracts for every execution must be allocated to an account by the clearing broker in such circumstances, there would be no loss of information by shifting the reporting obligation from the executing broker to the clearing broker.

(B) Identity of Prime Broker

To implement the Allocation Alternative, the Participants also requested exemptive relief from Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan, to the extent that the provision requires each Participant to, through its Compliance Rule, require its Industry Members to record and report to the Central Repository, if an order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the prime broker, if applicable. Currently, under the CAT NMS Plan, an Industry Member is required to report the SRO-Assigned Market Participant Identifier of the clearing broker or prime broker in connection with the execution of an order, and such information would be part of the order's lifecycle, rather than in an Allocation Report that is not linked to the order's lifecycle.[10] Under the Allocation Alternative, the identity of the prime broker would be required to be reported by the clearing broker on the Allocation Report, and, in addition, the prime broker itself would be required to report the ultimate allocation, which the Participants believe would provide more complete information.

The Participants stated that associating a prime broker with a specific execution, as is currently required by the CAT NMS Plan, does not reflect how the allocation process works in practice as allocations to a prime broker are done post-trade and are performed by the clearing broker of the executing broker. The Participants also stated that with the implementation of the Allocation Alternative, it would be duplicative for the executing broker to separately identify the prime broker for allocation purposes.

The Participants stated that if a particular customer only has one prime broker, the identity of the prime broker can be obtained from the customer and account information through the DVP accounts for that customer that contain the identity of the prime broker. The Participants further stated that Allocation Reports related to those executions would reflect that shares/contracts were allocated to the single prime broker. The Participants believe that there is no loss of information through the implementation of the Allocation Alternative compared to what is required in the CAT NMS Plan and that this approach does not decrease the regulatory utility of the CAT for single prime broker circumstances.

In cases where a customer maintains relationships with multiple prime brokers, the Participants asserted that the executing broker will not have information at the time of the trade as to which particular prime broker may be allocated all or part of the execution. Under the Allocation Alternative, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts where the shares/contracts were ultimately allocated. To determine the prime broker for a customer, a regulatory user would query the customer and account database using the customer's CCID to obtain all DVP accounts for the CCID at broker-dealers. The Participants state that when a customer maintains relationships with multiple prime brokers, the customer typically has a separate DVP account with each prime broker, and the identities of those prime brokers can be obtained from the customer and account information.

(C) Additional Conditions to Exemptive Relief

In the Exemption Request, the Participants included certain additional conditions for the requested relief. Currently, the definition of Allocation Report in the CAT NMS Plan only refers to shares. To implement the Allocation Alternative, the Participants proposed to require that all required elements of

executed trade to the client's account at another broker-dealer. In other words, a step-out functions as a client's position transfer, rather than a trade; there is no exchange of shares and funds and no change in beneficial ownership.'' *See* FINRA, Trade Reporting Frequently Asked Questions, at Section 301, available at: *https://www.finra.org/filing-reporting/market-transparencyreporting/trade-reporting-faq.*

[8] Correspondent clearing flips are the movement of a position from an executing broker's account to a different account for clearance and settlement, allowing a broker-dealer to execute a trade through another broker-dealer and settle the trade in its own account. *See, e.g.,* The Depository Trust & Clearing Corporation, Correspondent Clearing, available at: *https://www.dtcc.com/clearingservices/equities-tradecapture/correspondent-clearing.*

[9] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45748 (August 1, 2012).

[10] The Participants did not request exemptive relief relating to the reporting of the SRO-Assigned Market Participant Identifier of clearing brokers.

Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Specifically, Participants would require the reporting of the following in each Allocation Report: (1) The FDID for the account receiving the allocation, including subaccounts; (2) the security that has been allocated; (3) the identifier of the firm reporting the allocation; (3) the price per share/contracts of shares/contracts allocated; (4) the side of shares/contracts allocated; (4) the number of shares/contracts allocated; and (5) the time of the allocation.

Furthermore, to implement the Allocation Alternative, the Participants proposed to require the following information on all Allocation Reports: (1) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (2) trade date; (3) settlement date; (4) IB/correspondent CRD Number (if applicable); (5) FDID of new order(s) (if available in the booking system); [11] (6) allocation instruction time (optional); (7) if the account meets the definition of institution under FINRA Rule 4512(c); [12] (8) type of allocation (allocation to a custody account, allocation to a DVP account, step out, correspondent flip, allocation to a firm owned or controlled account, or other nonreportable transactions (*e.g.,* option exercises, conversions); (9) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (10) if an allocation was cancelled, a cancel flag, which indicates that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

(2) Proposed Rule Changes To Implement Exemptive Relief

On October 29, 2020, the Commission granted the exemptive relief requested in the Exemption Request. The Commission granted the relief conditioned upon the adoption of Compliance Rules that implement the reporting requirements of the Allocation Alternative. Accordingly, the Exchange proposes the following changes to its Compliance Rule to implement the reporting requirements of the Allocation Alternative.

(A) Definition of Allocation

The Exchange proposes to add a definition of ''Allocation'' as new paragraph (c) to Rule 7.20.[13] Proposed paragraph (c) of Rule 7.20 would define a ''Allocation'' to mean ''(1) the placement of shares/contracts into the same account for which an order was originally placed; or (2) the placement of shares/contracts into an account based on allocation instructions (*e.g.,* subaccount allocations, delivery versus payment (''DVP'') allocations).'' The Commission stated in the Allocation Exemption that this definition of ''Allocation'' is reasonable.

(B) Definition of Allocation Report

The Exchange proposes to amend the definition of ''Allocation Report'' set forth in Rule 7.20(c) to reflect the requirements of the Allocation Exemption. Rule 7.20(c) defines the term ''Allocation Report'' to mean:

a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

The Exchange proposes to amend this definition in two ways: (1) Applying the requirements for Allocation Reports to contracts in addition to shares; and (2) requiring the reporting of additional elements for the Allocation Report.

(i) Shares and Contracts

The requirements for Allocation Reports apply only to shares, as the definition of ''Allocation Report'' in Rule 7.20(c) refers to shares, not contracts. In the Allocation Exemption, the Commission stated that applying the requirements for Allocation Reports to contracts in addition to shares is appropriate because CAT reporting requirements apply to both options and equities. Accordingly, the Commission stated that the Participants would be required to modify their Compliance Rules such that all required elements of Allocation Reports apply to both shares and contracts, as applicable, for all Eligible Securities. Therefore, the Exchange proposes to amend Rule 7.20(c) (to be renumbered as Rule 7.20(d)) to apply to contracts, as well as shares. Specifically, the Exchange proposes to add references to contracts to the definition of ''Allocation Report'' to the following phrases: ''the Firm Designated ID for any account(s), including subaccount(s), to which executed shares/contracts are allocated,'' ''the price per share/contract of shares/contracts allocated,'' ''the side of shares/contracts allocated,'' and ''the number of shares/contracts allocated to each account.''

(ii) Additional Elements

The Commission also conditioned the Allocation Exemption on the Participants amending their Compliance Rules to require the ten additional elements in Allocation Reports described above. Accordingly, the Exchange proposes to require these additional elements in Allocation Reports. Specifically, the Exchange proposes to amend the definition of ''Allocation Report'' in Rule 7.20(c) (to be renumbered as Rule 7.20(d)) to include the following elements, in addition to those elements currently required under the CAT NMS Plan:

(6) the time of the allocation; (7) Allocation ID, which is the internal allocation identifier assigned to the allocation event by the Industry Member; (8) trade date; (9) settlement date; (10) IB/correspondent CRD Number (if applicable); (11) FDID of new order(s) (if available in the booking system); (12) allocation instruction time (optional); (12) if account meets the definition of institution under FINRA Rule 4512(c); (13) type of allocation (allocation to a custody account, allocation to a DVP account, step-out, correspondent flip, allocation to a firm owned or controlled account, or other non-reportable transactions (*e.g.,* option exercises, conversions); (14) for DVP allocations, custody broker-dealer clearing number (prime broker) if the custodian is a U.S. broker-dealer, DTCC number if the custodian is a U.S. bank, or a foreign indicator, if the custodian is a foreign entity; and (15) if an allocation was cancelled, a cancel flag indicating that the allocation was cancelled, and a cancel timestamp, which represents the time at which the allocation was cancelled.

[11] The Participants propose that for scenarios where the Industry Member responsible for reporting the Allocation has the FDID of the related new order(s) available, such FDID must be reported. This would include scenarios in which: (1) The FDID structure of the top account and subaccounts is known to the Industry Member responsible for reporting the Allocation(s); and (2) the FDID structure used by the IB/Correspondent when reporting new orders is known to the clearing firm reporting the related Allocations.

[12] FINRA Rule 4512(c) states the for purposes of the rule, the term ''institutional account'' means the account of: (1) A bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

[13] The Exchange proposes to renumber the definitions in Rule 7.20 to accommodate the addition of this new definition of ''Allocation'' and the new definition of ''Client Account'' discussed below.

(C) Allocation Reports

(i) Executing Brokers That Do Not Perform Allocations

The Commission granted the Participants an exemption from the requirement that the Participants, through their Compliance Rule, require executing brokers that do not perform Allocations to submit Allocation Reports. The Commission stated that it understands that executing brokers that are not self-clearing do not perform allocations themselves, and such allocations are handled by prime and/or clearing brokers, and these executing brokers therefore do not possess the requisite information to provide Allocation Reports. Accordingly, the Exchange proposes to eliminate Rule 7.22(a)(2)(A)(i),[14] which requires an Industry Member to record and report to the Central Repository an Allocation Report if the order is executed, in whole or in part, and to replace this provision with proposed Rule 7.22(a)(2)(F) as discussed below.

(ii) Industry Members That Perform Allocations

The Allocation Exemption requires the Participants to amend their Compliance Rules to require Industry Members to provide Allocation Reports to the Central Repository any time they perform Allocations to a client account, whether or not the Industry Member was the executing broker for the trades. Accordingly, the Commission conditioned the Allocation Exemption on the Participants adopting Compliance Rules that require prime and/or clearing brokers to submit Allocation Reports when such brokers perform allocations, in addition to requiring executing brokers that perform allocations to submit Allocation Reports. The Commission determined that such exemptive relief would improve efficiency and reduce the costs and burdens of reporting allocations for Industry Members because the reporting obligation would belong to the Industry Member with the requisite information, and executing brokers that do not have the information required on an Allocation Report would not have to develop the infrastructure and processes required to obtain, store and report the information. The Commission stated that this exemptive relief should not reduce the regulatory utility of the CAT because an Allocation Report would still be submitted for each executed trade allocated to a client account, which in certain circumstances could still result in multiple Allocation Reports,[15] just not necessarily by the executing broker.

In accordance with the Allocation Exemption, the Exchange proposes to add proposed 7.22(a)(2)(F) to the Compliance Rule. Proposed Rule 7.22(a)(2)(F) would require Industry Members to record and report to the Central Repository ''an Allocation Report any time the Industry Member performs an Allocation to a Client Account, whether or not the Industry Member was the executing broker for the trade.''

(iii) Client Accounts

In the Allocation Exemption, the Commission also exempted the Participants from the requirement that they amend their Compliance Rules to require Industry Members to report Allocations for accounts other than client accounts. The Commission believes that allocations to client accounts, and not allocations to proprietary accounts or events such as step-outs and correspondent flips, provide regulators the necessary information to detect abuses in the allocation process because it would provide regulators with detailed information regarding the fulfillment of orders submitted by clients, while reducing reporting burdens on broker-dealers. For example, Allocation Reports would be required for allocations to registered investment advisor and money manager accounts. The Commission further believes that the proposed approach should facilitate regulators' ability to distinguish Allocation Reports relating to allocations to client accounts from other Allocation Reports because Allocations to accounts other than client accounts would have to be identified as such. This approach could reduce the time CAT Reporters expend to comply with CAT reporting requirements and lower costs by allowing broker-dealers to use existing business practices.

To clarify that an Industry Member must report an Allocation Report solely for Allocations to a client account, proposed Rule 7.22(a)(2)(F) specifically references ''Client Accounts,'' as discussed above. In addition, the Exchange proposes to add a definition of ''Client Account'' as proposed Rule 7.20(l). Proposed Rule 7.20(l) would define a ''Client Account'' to mean ''for the purposes of an Allocation and Allocation Report, any account or subaccount that is not owned or controlled by the Industry Member.''

(D) Identity of Prime Broker

The Exchange also proposes to amend Rule 7.22(a)(2)(A)(ii) to eliminate the requirement for executing brokers to record and report the SRO-Assigned Market Participant Identifier of the prime broker. Rule 7.22(a)(2)(A)(ii) states that each Industry Member is required to record and report to the Central Repository, if the order is executed, in whole or in part, the ''SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable.'' The Exchange proposes to delete the phrase ''or prime broker'' from this provision. Accordingly, each Industry Member that is an executing broker would no longer be required to report the SRO-Assigned Market Participant Identifier of the prime broker.

As the Commission noted in the Allocation Exemption, exempting the Participants from the requirement that they, through their Compliance Rules, require executing brokers to provide the SRO-Assigned Market Participant Identifier of the prime broker is appropriate because, as stated by the Participants, allocations are done on a post-trade basis and the executing broker will not have the requisite information at the time of the trade. Because an executing broker, in certain circumstances, does not have this information at the time of the trade, this relief relieves executing brokers of the burdens and costs of developing infrastructure and processes to obtain this information in order to meet the contemporaneous reporting requirements of the CAT NMS Plan.

As the Commission noted in the Allocation Exemption, although executing brokers would no longer be required to provide the prime broker information, regulators will still be able to determine the prime broker(s) associated with orders through querying the customer and account information database. If an executing broker has only one prime broker, the identity of the prime broker can be obtained from the customer and account information associated with the executing broker. For customers with multiple prime brokers, the identity of the prime brokers can be obtained from the customer and account information which will list the prime broker, if there

[14] The Exchange proposes to renumber Rule 7.22(a)(2)(A)(ii) and (iii) as Rules 7.22 (a)(2)(A)(i) and (ii) in light of the proposed deletion of Rule 7.22(a)(2)(A)(i).

[15] As noted above, under the Allocation Alternative, for certain executions, the executing broker (if self-clearing) or its clearing firm would report individual Allocation Reports identifying the specific prime broker to which shares/contracts were allocated and then each prime broker would itself report an Allocation Report identifying the specific customer accounts to which the shares/contracts were finally allocated.

is one, that is associated with each account.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] 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)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that this proposal is consistent with the Act because it is consistent with, and implements, the Allocation Exemption, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the Commission noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.''[19] To the extent that this proposal implements the Plan, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with the Allocation Exemption, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the proposed rule changes will apply equally to all Industry Members. In addition, all national securities exchanges and FINRA are proposing this amendment to their Compliance Rules. Therefore, this is not a competitive rule filing and does not impose a burden on competition.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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[20] and Rule 19b–4(f)(6)[21] 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–2021–007 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–2021–007. 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–CBOE–2021–007, and should be submitted on or before February 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–02186 Filed 2–2–21; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16856 and #16857; Tennessee Disaster Number TN–00125]

Administrative Declaration of a Disaster for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated 01/28/2021. Incident: Explosion. Incident Period: 12/25/2020.

DATES: Issued on 01/28/2021.

Physical Loan Application Deadline Date: 03/29/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 10/28/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Davidson.

Contiguous Counties:

Tennessee: Cheatham, Robertson, Rutherford, Sumner, Williamson, Wilson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.250
Homeowners without Credit Available Elsewhere	1.125
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	3.000
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.000
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16856 4 and for economic injury is 16857 0.

The State which received an EIDL Declaration # is Tennessee.

(Catalog of Federal Domestic Assistance Number 59008)

Tami Perriello,

Acting Administrator.

[FR Doc. 2021–02214 Filed 2–2–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16860 and #16861; Florida Disaster Number FL–00163]

Administrative Declaration of a Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 01/28/2021. Incident: Hurricane Sally. Incident Period: 09/13/2020 through 09/18/2020.

DATES: Issued on 01/28/2021.

Physical Loan Application Deadline Date: 03/29/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 10/28/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Washington.

Contiguous Counties:

Florida: Bay, Holmes, Jackson, Walton.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.375
Homeowners without Credit Available Elsewhere	1.188
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	3.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16860 8 and for economic injury is 16861 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Number 59008)

Tami Perriello,

Acting Administrator.

[FR Doc. 2021–02213 Filed 2–2–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16858 and #16859; Florida Disaster Number FL–00164]

Administrative Declaration of a Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 01/28/2021.

Incident: Tropical Storm Eta.

Incident Period: 11/09/2020 through 11/12/2020.

DATES: Issued on 01/28/2021.

Physical Loan Application Deadline Date: 03/29/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 10/28/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Pinellas.

Contiguous Counties:

Florida: Hillsborough, Pasco.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.250
Homeowners without Credit Available Elsewhere	1.125
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	3.000
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.000
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 16858 8 and for economic injury is 16859 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Number 59008)

Tami Perriello,

Acting Administrator.

[FR Doc. 2021–02215 Filed 2–2–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Request to Release Airport Property for Land Disposal at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

SUMMARY: The FAA proposes to rule and invites public comment on the release and sale of two parcels of land at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

DATES: Comments must be received on or before March 5, 2021.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Lynn Koehn, The Koehn Law Firm, L.L.C., 217 N Washington, Liberal, KS 67901.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov*.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 4.28 acres of airport property at the Liberal Mid-America Regional Airport (LBL) under the provisions of 49 U.S.C. 47107(h)(2). The Airport Sponsor has requested from the FAA that two parcels of land for a combined 4.28 acres of property be released for sale to the City of Liberal Water Department. The FAA determined the request to release and sell property at Liberal Mid-America Regional Airport (LBL) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Liberal Mid-America Regional Airport (LBL) is proposing the release and sale of two parcels of airport property, totaling 4.28 acres. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the release of land and surface rights at the Liberal Mid-America Regional Airport (LBL) from the conditions of the AIP Grant Agreement Grant Assurances, but retaining the mineral rights. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value and the property will be used as a water reservoir and warehouse by the City of Liberal Water Department.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, request an appointment and inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Liberal Mid-America Regional Airport.

Issued in Kansas City, MO, on January 20, 2021.

James A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2021–02109 Filed 2–2–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2021–2048]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before February 23, 2021.

ADDRESSES: Send comments identified by docket number FAA–2018–0283 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.
- *Privacy:* Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received without change, to *http://*

www.regulations.gov/, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposal.

• *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. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of this Notice. Submissions containing CBI should be sent to Alan Sinclair, AIR–626, Human-Machine Interface Section, Technical Innovation Policy Branch, Policy and Innovation Division, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3215; email *alan.sinclair@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

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

FOR FURTHER INFORMATION CONTACT: Mark Forseth, AIR–612, Technical Writing Section, Strategic Policy Management Branch, Policy and Innovation Division, Federal Aviation Administration, 2200 S 216th St., Des Moines, WA 98198–6547, email *mark.forseth@faa.gov,* phone (206) 231–3179.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Daniel Commins,

Acting Manager, AIR–612, Technical Writing Section, Strategic Policy Management Branch, Policy and Innovation Division, Federal Aviation Administration.

Petition for Exemption

Docket No.: FAA–2020–1185.

Petitioner: Dassault Aviation.

Section of 14 CFR Affected: Part 25, SFAR 109.2(d) and (g).

Description of Relief Sought: Permit doors between the galley and the passenger cabin, in part 135 operations, on Model Falcon 6X airplanes.

[FR Doc. 2021–02198 Filed 2–2–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Foreign Tax Credit; Notification of Foreign Tax Redeterminations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning foreign tax credit; notification of foreign tax redeterminations.

DATES: Written comments should be received on or before April 5, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Foreign Tax Credit; Notification of Foreign Tax Redeterminations.

OMB Number: 1545–1056.

Regulation Project Number: TD 9922 (REG–101657–20)/REG–209020–86.

Abstract: The regulation relates to a taxpayer's obligation under section 905© of the Internal Revenue Code to file notification of a foreign tax redetermination, to make adjustments to a taxpayer's pools of foreign taxes and earnings and profits, and the imposition of the civil penalty for failure to file such notice or report such adjustments.

Current Actions: There is no change in the paperwork burden previously approved by OMB. The regulation is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 13,500.

Estimated Time per Response: 4.153 hours.

Estimated Total Annual Burden Hours: 56,065.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–02229 Filed 2–2–21; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 86 Wednesday,

No. 21 February 3, 2021

Part II

Federal Deposit Insurance Corporation

12 CFR Parts 303, 308, 338, et al.

Removal of Transferred Office of Thrift Supervision (OTS) Regulations Regarding Nondiscrimination Requirements; Application Processing Procedures of State Savings Associations and Conforming Amendments to Other Regulations; Certain Subordinate Organizations of State Savings Associations; and Prompt Corrective Action Directives and Conforming Amendments to Other Regulations; Final Rules

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 338 and 390

RIN 3064–AF35

Removal of Transferred Office of Thrift Supervision (OTS) Regulations Regarding Nondiscrimination Requirements

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is rescinding and removing its regulation titled ''Nondiscrimination Requirements'' and amending its regulation titled ''Fair Housing'' to make it applicable to State savings associations. These actions will streamline the FDIC's rules by eliminating unnecessary, inconsistent, and duplicative regulations, and ensure insured State nonmember banks and State savings associations generally will be subject to the same nondiscrimination requirements.

DATES: The final rule is effective on March 5, 2021. Compliance with 12 CFR 338.4(b) regarding displaying the current address of the FDIC's Consumer Response Center on an Equal Housing Lender poster is mandatory on February 3, 2022.

FOR FURTHER INFORMATION CONTACT: Navid Choudhury, Counsel, Legal Division, (202) 898–6526, *nchoudhury@fdic.gov;* Jamie Goodson, Senior Policy Analyst, (202) 898–6685, *jagoodson@fdic.gov;* Ernestine Ward, Policy Analyst, (202) 898–3812, *erward@fdic.gov;* and Evelyn Manley, Fair Lending Specialist, (202) 898–3775, *emanley@fdic.gov,* Division of Depositor and Consumer Protection.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Dodd-Frank Act[1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. Section 316(b) states that if the materials were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act[4] further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[5]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[6] granted the OCC rulemaking authority relating to both State and Federal savings associations, the Dodd-Frank Act did not generally affect the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act) and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act[7] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, except in limited circumstances in which certain rulemaking authority is specifically given to another agency, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is generally authorized to issue, modify and rescind regulations involving such associations, insured State nonmember banks, and insured branches of foreign banks.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferred OTS regulations. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[8] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating them into other FDIC regulations, amending them, or rescinding them, as appropriate.

One of the OTS rules transferred to the FDIC requires State savings associations to not discriminate with respect to lending, employment, and other services provided. The OTS rule, formerly found at 12 CFR part 528 (part 528), was transferred to the FDIC with only technical changes and is now found in the FDIC's rules at part 390, subpart G, entitled ''Nondiscrimination Requirements.''

II. The Proposal

A. Removal of Part 390, Subpart G, Nondiscrimination Requirements

On September 25, 2020, the FDIC published a notice of proposed rulemaking (NPR or ''proposal'') regarding the removal of part 390, subpart G (85 FR 60389). Although few provisions of part 390, subpart G, have a direct counterpart within the FDIC's regulations, the provisions are largely duplicative of regulations implementing Federal laws (Equal Credit Opportunity Act (ECOA), Fair Housing Act (FHA), Equal Employment Opportunity Act (EEOA), and other laws concerning nondiscrimination in lending, employment, and services) implemented by other agencies. Regarding the functions of the former OTS that were transferred to the FDIC, section 316(b)(3) of the Dodd-Frank Act[9] provides that the former OTS regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After careful review of part 390, subpart G, the FDIC, as the appropriate Federal banking agency for State savings associations, proposed to rescind and remove part 390, subpart G, in its entirety, because, as discussed in the NPR, it is duplicative, unnecessary, and burdensome to require State savings

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] Codified at 12 U.S.C. 5411.

[3] Codified at 12 U.S.C. 5414(b).

[4] Codified at 12 U.S.C. 5414(c).

[5] 76 FR 39247 (July 6, 2011).

[6] Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1813(q).

[8] 76 FR 47652 (Aug. 5, 2011).

[9] 12 U.S.C. 5414(b)(3).

associations to comply with additional requirements to which insured State nonmember banks are not subject. The FDIC received no comments on the proposal to rescind and remove part 390, subpart G.

For a statement of the rationale for rescission and removal of each section of subpart G, the reader is referred to the fulsome explanations provided in the NPR, which the FDIC references here as the basis for finalizing the regulations as proposed. In several instances, the proposal to remove a specific section of subpart G was coupled with a proposed amendment to part 338 of the FDIC's regulations. These amendments are also discussed below.

B. Amendments to Part 338 Fair Housing

The FDIC's part 338, Fair Housing, applies to insured State nonmember banks and addresses discrimination in advertising and recordkeeping requirements under ECOA and the Home Mortgage Disclosure Act (HMDA). The FDIC proposed to make technical conforming edits to part 338 to encompass State savings associations and update the regulation. In short, the FDIC proposed to: (1) Revise § 338.1 to reflect that the advertising provisions of subpart A apply to State savings associations and their subsidiaries, to conform to and reflect the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency for State savings associations; (2) in § 338.2, add a defined term ''FDIC-supervised institution,'' defined to mean ''either a bank [defined in § 338.2(a) to mean ''an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act''] or a State savings association''; (3) add a new subsection to define ''State savings association'' as having ''the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act;'' [10] (4) make conforming technical edits throughout, including replacing the term ''FDIC-supervised institution'' or ''institution'' in place of ''bank'' throughout the rule where necessary and revising references to the FRB's 12 CFR parts 202 and 203 throughout part 338 to refer to the Bureau of Consumer Financial Protection's (CFPB) 12 CFR parts 1002 and 1003, respectively; and (5) amend § 338.4 to update the text required for the Equal Housing Lender poster to the correct address for the FDIC Consumer Response Center. The FDIC received no comments on the proposal to amend part 338.

The Supplementary Information section of this final rule sets forth the rationales for the amendments to the FDIC's regulations located in part 338 because, as proposed, the final rule revises FDIC regulations that will remain in place, albeit in an amended form.

1. Section 338.1—Purpose

Section 338.1 states that its purposes are to prohibit insured State nonmember banks from engaging in discriminatory advertising with regard to residential real estate-related transactions and require them to publicly display either the Equal Housing Lender poster set forth in § 338.4(b) of the FDIC's regulations or the Equal Housing Opportunity poster prescribed in 24 CFR part 110 in HUD's regulations. The FDIC proposed to amend § 338.1 to change references to ''insured State nonmember banks'' to refer to ''FDIC-supervised institutions'' to reflect that § 338.1 applies to all institutions for which the FDIC is the appropriate Federal banking agency.

2. Section 338.2—Definitions Applicable to This Subpart

Section 338.2 defines terms used in subpart A of part 338, including the term ''bank'' defined in § 338.2(a) to mean ''an insured state nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.'' The FDIC proposed to add a new defined term ''FDIC-supervised institution'' meaning a bank or a State savings association to § 338.2(c) and to add to § 338.2(f), a new defined term ''State savings association'' having ''the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).'' The FDIC also proposed to make conforming technical edits to other subsections in § 338.2 to reflect the re-ordering of definitions.

3. Section 338.3—Nondiscriminatory Advertising

Section 338.3 provides certain requirements with respect to dwelling-related advertisements to reflect the bank's nondiscrimination lending practice and prohibits such advertisements from including ''words, symbols, models, or other forms of communication which express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provisions of the FHA or ECOA. To reflect that § 338.3 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposed to amend § 338.3 to change references to ''bank'' to refer to ''FDIC-supervised institution.''

4. Section 338.4—Fair Housing Poster

Section 338.4(a) requires insured State nonmember banks engaged in extending dwelling-related loans to conspicuously display either an Equal Housing Lender poster or an Equal Housing Opportunity poster ''in a central location within the bank where deposits are received or where such loans are made in a manner clearly visible to the general public entering the area, where the poster is displayed.'' This requirement is substantially similar to the requirement in § 390.146 for State savings associations to display an Equal Housing Lender poster, which the FDIC proposed to rescind and remove. To reflect that § 338.4(a) applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposed to amend § 338.4(a) to change references to ''insured State nonmember banks'' to refer to ''FDIC-supervised institutions.''

Section 338.4(b) sets forth the required text of the FDIC's Equal Housing Lender poster, including the former mailing address of the FDIC's Consumer Response Center (CRC), formatted as a Portable Document Format (PDF) image. When the CRC mailing address changed in 2011, the FDIC made available to FDIC-supervised institutions an Equal Housing Lender poster with the correct address of the CRC, both in English and in Spanish.[11] However, because the CRC mailing address may change in the future, the FDIC proposed to amend § 338.4(b) to reflect that the mailing address stated on the Equal Housing Lender poster should be the address for the CRC stated on the FDIC's website at *www.fdic.gov.*[12] Furthermore, the FDIC proposed to set forth the required text of the Equal Housing Lender poster in § 338.4(b) as a text statement rather than as a PDF image.

To assist FDIC-supervised institutions, the FDIC expects to continue to provide them with access to a poster stating the required text, including the accurate CRC mailing

[10] 12 U.S.C. 1813(b)(3).

[11] The poster is available to both insured State nonmember banks and State savings associations. Moreover, the current CRC mailing address is correctly stated in FDIC regulations applicable to State savings associations. 12 CFR 390.146.

[12] Currently, the mailing address for the Consumer Response Center (1100 Walnut St., Box #11 Kansas City, MO 64106) is provided at *https://www.fdic.gov/consumers/assistance/filecomplaint.html.* Since May 31, 2012, Regulation B has required the use of that address in adverse action notices, as applicable. *See* Board of Governors of the Federal Reserve System, Final Rule, Equal Credit Opportunity, 76 FR 31451 (Jun. 1, 2011).

address. With the FDIC adopting the proposal as final, no change to posters would be required of FDIC-supervised institutions that use an Equal Housing Lender poster obtained from the FDIC, because the CRC mailing address was updated in 2011. The FDIC believes that few insured State nonmember banks make their own Equal Housing Lender poster based on the text of § 338.4(b). Nonetheless, to facilitate the transition to the updated poster, the FDIC is providing a one-year transition period for FDIC-supervised institutions to change their posters to reflect the current CRC mailing address, if needed. That is, the effective date of § 338.4(b), as amended, is one year after this final rule amending the provision is published in the **Federal Register**.

5. Section 338.5—Purpose

Section 338.5 states that its purpose is to notify insured State nonmember banks of their duty both to collect and retain certain information about a home loan applicant's personal characteristics in accordance with Regulation B and to maintain, update and report a register of home loan applications in accordance with Regulation C. To reflect that § 338.5 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposed to amend § 338.5 to change references to ''insured State nonmember banks'' to refer to ''FDIC-supervised institutions.'' The FDIC also proposed to make technical amendments to § 338.5 to reflect that Regulation B and Regulation C have been re-designated as 12 CFR part 1002 and 12 CFR part 1003, respectively, and are implemented by the CFPB.

6. Section 338.6—Definitions Applicable to This Subpart

Section 338.6 defines terms used in subpart B of part 338, including the term ''bank'' defined in § 338.6(a) to mean ''an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.'' The FDIC proposed to add to § 338.2(c) a new defined term ''FDIC-supervised institution'' meaning a bank or a State savings association and add to § 338.6(d) a new defined term ''State savings association'' having ''the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).''

7. Section 338.7—Recordkeeping Requirements

Section 338.7 requires banks that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence where the extension of credit will be secured by the dwelling to request and retain the monitoring information required by Regulation B.[13] To reflect that § 338.7 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposed to amend § 338.7 to change references to ''bank'' to refer to ''FDIC-supervised institution.'' The FDIC also proposed to make technical amendments to § 338.7 to reflect that Regulation B has been re-designated as 12 CFR part 1002 and is implemented by the CFPB.

8. Section 338.8— Compilation of Loan Data in Register Format

Section 338.8 requires banks and other lenders required to file a HMDA loan/application register (LAR) with the FDIC to maintain, update and report such LAR in accordance with Regulation C. To reflect that § 338.8 applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposed to amend § 338.8 to change references to ''bank'' to refer to ''FDIC-supervised institution.'' Additionally, to reflect amendments made to Regulation C regarding the responsibilities of a financial institution with respect to HMDA LAR data, the FDIC proposed to amend § 338.8 to require banks and other lenders required to file a HMDA LAR with the FDIC to collect, record, and report such LAR in accordance with Regulation C. The FDIC also proposed to make technical amendments to § 338.8 to reflect that Regulation C has been re-designated as 12 CFR part 1003 and is implemented by the CFPB.

9. Section 338.9—Mortgage Lending of a Controlled Entity

Section 338.9 establishes requirements that apply if a bank refers applicants to a ''controlled entity,'' as defined in § 338.6, and purchases any home purchase loans or home improvement loans (as defined in Regulation C) that are originated by the controlled entity, as a condition to transacting any business with the controlled entity.[14] In such cases, § 338.9 provides that the bank must require the controlled entity to enter into a written agreement with the bank that states that the controlled entity must comply with the requirements of §§ 338.3, 338.4 and 338.7 and, if the controlled entity is subject to Regulation C, § 338.8. Further, the written agreement must provide that the controlled entity must open its books and records to FDIC examination and comply with all FDIC instructions and orders with respect to its home loan practices.

Because this final rule is intended to rescind and remove former OTS regulations that are duplicative of regulations under ECOA, FHA, or EEOA, the FDIC did not propose to impose substantive requirements regarding the business transactions between a State savings association and any entity it controls and therefore did not propose to replace the term ''bank'' with the term ''FDIC-supervised institution'' in § 338.9. However, the FDIC proposed to make technical amendments to § 338.9 to reflect that Regulation C has been re-designated as 12 CFR part 1003 and is implemented by the CFPB.

III. Comments

The FDIC received no comments on the rescission and removal of part 390, subpart G, nor to the amendments to part 338.

IV. The Final Rule

For the reasons stated herein and in the NPR, the FDIC is adopting the proposal as proposed.

V. Expected Effects

As of June 30, 2020, the FDIC supervised 3,270 depository institutions,[15] of which 35 are State savings associations.[16]

The final rule rescinds §§ 390.140 and 390.141. As discussed previously, these sections include definitions and cross-references to other parts of section 390, so their rescission has no independent significance for institutions or applicants, but rather is a technical amendment associated with the rescission of subpart G of part 390 in its entirety.

The final rule rescinds § 390.142. As discussed in the NPR, this section has substantial overlap with the requirements of ECOA and Regulation B and the FHA and HUD's FHA regulations. Therefore, the FDIC believes that these aspects of the final rule are unlikely to significantly affect FDIC-supervised institutions or applicants.

[13] This requirement relates to the collection of information for monitoring purposes required by 12 CFR 1002.13.

[14] Pursuant to § 338.6(b), ''controlled entity'' means ''a corporation, partnership, association, or other business entity with respect to which a bank possesses, directly or indirectly, the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, or otherwise.''

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

[16] FDIC Call Report data, June 30, 2020.

The final rule rescinds § 390.143. As discussed in the NPR, aspects of § 390.143 are either duplicative of prohibitions under the general fair lending laws. With regard to § 390.143(b), the rule reduces compliance requirements associated with maintaining and distributing relevant paperwork. The FDIC believes that this is likely to pose a relatively small benefit to the 35 institutions to which it applies. Further, the FDIC believes that it is unlikely that the rescission of the requirement to establish, maintain, and distribute upon request nondiscriminatory loan underwriting standards for these 35 State savings associations would lead to an increase in discriminatory lending behavior because these institutions are still subject to the general fair lending laws. Therefore, the FDIC does not believe that this aspect of the final rule, if adopted, is likely to have substantive effects on FDIC-supervised institutions or applicants.

The final rule rescinds § 390.144. As discussed in the NPR, Section 390.144(a) is substantially similar to, and duplicative of, prohibitions under the general Federal fair lending laws.[17] The FDIC also believes that the requirement to post an Equal Housing Lender poster, discussed above in connection with § 338.4, serves a substantially similar purpose as the requirement to ''inform each inquirer of his or her right to file a written loan application'' in § 390.144(b). Therefore, the FDIC believes that the rescission of § 390.144 is unlikely to have any substantive effect on FDIC-supervised institutions or applicants.

The final rule rescinds § 390.145. As discussed in the NPR, Section 390.145 is substantially similar to § 338.4 and the rule amends § 338.4 to cover State savings associations in addition to insured State nonmember banks. Therefore, the FDIC believes that this aspect of the final rule is unlikely to have any substantive effect on FDIC-supervised institutions or applicants.

The final rule rescinds § 390.146. As discussed in the NPR, the requirements of § 390.146 are substantially similar to the requirements applicable to insured State nonmember banks under § 338.4. Section 338.4, however, unlike § 390.146, does not include a ''recommendation'' that a Spanish-language version of the Equal Housing Lender poster be posted in offices serving areas with a substantial Spanish-speaking population. The FDIC does, however, make a Spanish-language poster available to the institutions it supervises. Given the substantive similarity of much of § 390.146 to § 338.4, the FDIC believes that rescinding it is unlikely to have substantial effects on covered institutions or applicants.

With the adoption of this final rule the FDIC rescinds § 390.147. As discussed in the NPR, the FDIC believes that § 390.147 is duplicative now that reporting reason for denial is required rather than optional under Regulation C. Further, since Regulation C provides a partial exemption from reporting reason for denial and certain other data points for financial institutions that meet specified conditions, but no such exemption exists for State savings associations, the final rule establishes parity with respect to the reporting requirements for HMDA LARs for State savings associations and other FDIC-supervised institutions. The FDIC believes that this aspect of the final rule is unlikely to significantly affect FDIC-supervised institutions or applicants.

The final rule rescinds § 390.148. As discussed in the NPR, the FDIC believes that there is significant overlap between the requirements of § 390.148(a) through (d) and various aspects of the EEOA. Further, § 390.148(e) and (f) references multiple employment laws, including the EEOA, which with the rescission of the rest of § 390.148, would be unnecessary. Therefore, the FDIC believes that this aspect of the final rule is unlikely to substantively affect FDIC-supervised institutions or applicants.

The final rescinds § 390.149. As discussed in the NPR, the FDIC has procedures for referring complaints to HUD regarding lending discrimination by financial institutions and these procedures apply to complaints involving lending by State savings associations. However, there appears to be no equivalent requirement to the provisions in § 390.149 regarding referring complaints to the Equal Employment Opportunity Commission (EEOC) regarding employment discrimination by FDIC-supervised institutions. This aspect of the final rule will thus create parity between insured State nonmember banks and State savings associations with respect to complaints about discriminatory lending. Given that FDIC-supervised institutions are still subject to applicable elements of the EEOA and FDIC regulations and procedures, the FDIC does not believe that this aspect of the final rule is likely to have a substantive effect on covered institutions or their employees.

The final rule rescinds § 390.150. As discussed in the NPR, this section contains guidelines intended to serve as a resource for State savings associations when developing and implementing nondiscriminatory lending policies. State savings associations, like other FDIC-supervised banks, remain subject to Federal fair lending laws and regulations and the FDIC does not believe removal of these guidelines will have any meaningful effect on these institutions or their applicants.

Finally, the final rule makes some technical changes to FDIC's part 338 in order to make it applicable to State savings associations and provide for Equal Housing Lender posters to state the accurate CRC mailing address. As previously discussed, these changes are unlikely to have significant effects on State savings associations because those savings associations are already subject to substantively similar regulations. Rescinding part 390, subpart G, also will serve to streamline the FDIC's rules and eliminate unnecessary, inconsistent, and duplicative regulations. The final rule will ensure that insured State nonmember banks and State savings associations will be subject to the same antidiscrimination requirements.

VI. Alternatives

Several alternatives to the final rule were available to the FDIC. The FDIC could have retained the current regulations in part 390, subpart G, but chose not to do so since most of the requirements in subpart G are duplicative of or substantively similar to existing requirements under Federal law or under the FDIC's current fair housing requirements in part 338. As discussed in the NPR, the FDIC also could have retained certain requirements in subpart G that the OTS issued pursuant to the Home Owners' Loan Act, but chose not to do.

In the instances where the regulations in part 390, subpart G, were more stringent than similar requirements for insured State nonmember banks, the FDIC could have applied those requirements to insured State nonmember banks. However, the FDIC chose not to adopt this alternative because it believes the fair lending laws and regulations that already apply to insured State nonmember banks provide an appropriate and sufficient framework to prohibit discrimination.

The FDIC believes that this final rule, which removes and rescinds part 390, subpart G, and makes the FDIC's existing nondiscrimination regulations applicable to State savings associations, is less burdensome to State savings associations and the public than the alternatives discussed above since it would promote consistency among the

[17] *See, e.g.,* 15 U.S.C. 1691(a); 42 U.S.C. 3605; 12 CFR 1002.4; 24 CFR 100.120.

regulatory requirements for all FDIC-supervised institutions and improve the public's understanding and ease of reference. Additionally, the FDIC believes that the final rule does not materially change the nondiscrimination requirements to which insured State nonmember banks and State savings associations are required to adhere, relative to the alternatives discussed.

VII. Administrative Law Matters

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[18] 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 rescission and removal from FDIC regulations of part 390, subpart G, does not create new or modify existing information collection requirements. Accordingly, no submission to OMB will be made with respect to the final rule.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the final rule on small entities.[19] However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[20] 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 described below and under section 605(b) of the RFA, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2020, the FDIC supervised 3,270 depository institutions,[21] of which 2,492 were considered small entities for the purposes of RFA.[22] There are 33 State savings associations that are small entities for the purposes of RFA.[23] This final rule rescinds §§ 390.140 and 390.141. As discussed previously, these sections include definitions and cross-references to other parts of section 390, so their rescission has no independent significance for institutions or borrowers, but rather is a technical amendment associated with the proposal to rescind subpart G of part 390 in its entirety.

As previously discussed, this final rule rescinds § 390.142. This section has substantial overlap with the requirements of ECOA and Regulation B and the FHA and HUD's FHA regulations. Therefore, the FDIC believes that these aspects of the final rule are unlikely to significantly affect small FDIC-supervised institutions or borrowers.

The final rule rescinds § 390.143. As discussed previously, aspects of § 390.143 are duplicative of prohibitions under the general fair lending laws. With regard to § 390.143(b), the final rule reduces compliance requirements associated with maintaining and distributing relevant paperwork. The FDIC believes that this is likely to pose a relatively small benefit to the 33 small institutions to which it applies. Further, the FDIC believes that it is unlikely that the rescission of the requirement to establish, maintain, and distribute upon request nondiscriminatory loan underwriting standards for these 33 small State savings associations will lead to an increase in discriminatory lending behavior because these institutions are still subject to the general fair lending laws. Therefore, the FDIC does not believe that this aspect of the final rule is likely to have substantive effects on small FDIC-supervised institutions or borrowers.

As discussed previously, the final rule rescinds § 390.144. Section 390.144(a) is substantially similar to, and duplicative of, prohibitions under the general Federal fair lending laws.[24] The FDIC also believes that the requirement to post an Equal Housing Lender poster, discussed above in connection with 12 CFR 338.4, serves a substantially similar purpose as the requirement to ''inform each inquirer of his or her right to file a written loan application'' in 12 CFR 390.144(b). Therefore, the FDIC believes that the rescission of § 390.144 is unlikely to have any substantive effect on small FDIC-supervised institutions or borrowers.

As discussed previously, the final rule rescinds § 390.145. Section 390.145 is substantially similar to § 338.4 and the final rule amends § 338.4 to cover State savings associations in addition to insured State nonmember banks. Therefore, the FDIC believes that this aspect of the final rule is unlikely to have any substantive effect on small FDIC-supervised institutions or borrowers.

As discussed previously, the final rule rescinds § 390.146. The requirements of § 390.146 are substantially similar to the requirements applicable to insured State nonmember banks under § 338.4. However, § 338.4, unlike § 390.146, does not include a ''recommendation'' that a Spanish-language version of the Equal Housing Lender poster be posted in offices serving areas with a substantial Spanish-speaking population. The FDIC does make a Spanish-language poster available to the institutions it supervises. Given the substantive similarity of much of §§ 390.146 to 338.4, the FDIC believes that rescinding it is unlikely to have substantial effects on small covered institutions or borrowers.

The final rule rescinds § 390.147. As previously discussed, the FDIC believes that § 390.147 is duplicative now that reporting reason for denial is required rather than optional under Regulation C. Further, since Regulation C provides a partial exemption from reporting reason for denial and certain other data points for financial institutions that meet specified conditions, but no such exemption exists for State savings associations, the final rule establishes parity with respect to the reporting requirements for HMDA LARs for State savings associations and other FDIC-supervised institutions. The FDIC believes that this aspect of the final rule is unlikely to substantively affect small FDIC-supervised institutions or borrowers.

As previously discussed, the final rule rescinds § 390.148. The FDIC believes that there is significant overlap between the requirements of § 390.148(a)–(d) and

[18] 44 U.S.C. 3501–3521.

[19] 5 U.S.C. 601 *et seq.*

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

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

[22] FDIC Call Report data, June 30, 2020.

[23] Id.

various aspect of the EEOA. Further, § 390.148(e) & (f) references multiple employment laws, including the EEOA, which if the rest of § 390.148 were rescinded as proposed, would be unnecessary. Therefore, the FDIC believes that this aspect of the final rule is unlikely to substantively affect small FDIC-supervised institutions or borrowers.

As previously discussed, the final rule rescinds § 390.149. The FDIC has procedures for referring complaints to HUD regarding lending discrimination by financial institutions and these procedures apply to complaints involving lending by State savings associations. However, there appears to be no equivalent requirement to the provisions in § 390.149 regarding referring complaints to the EEOC regarding employment discrimination by FDIC-supervised institutions. This aspect of the final rule thus creates parity between State nonmember banks and State savings associations with respect to discriminatory complaints. Given that FDIC-supervised institutions are still subject to applicable elements of the EEOA and FDIC regulations and procedures, the FDIC does not believe that this aspect of the final rule is likely to have a substantive effect on covered institutions or their employees.

As previously discussed, the final rule rescinds § 390.150. This section contains guidelines intended to serve as a resource for State savings associations when developing and implementing nondiscriminatory lending policies. Small State savings associations, like other FDIC-supervised banks, remain subject to Federal fair lending laws and regulations and the FDIC does not believe removal of these guidelines will have any meaningful effect on these institutions or their borrowers.

Finally, the final rule makes some technical changes to FDIC's part 338 in order to make it applicable to State savings associations and provide for Equal Housing Lender posters to state the accurate CRC mailing address. As previously discussed, these changes are unlikely to pose significant effects for small State savings associations because they are already subject to substantively similar regulations.

Rescinding part 390, subpart G, also will serve to streamline the FDIC's rules and eliminate unnecessary, inconsistent, and duplicative regulations. The final rule generally provides for all small insured State nonmember banks and State savings associations to be subject to the same nondiscrimination requirements.

The FDIC does not have data with which to estimate the costs that State savings associations currently incur to comply with subpart G or how those costs will change pursuant to this final rule. However, since this final rule affects only 33 small entities, and since the differences between subpart G and existing regulation and law are modest, the FDIC certifies that this final rule will not have a significant economic effect on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [25] requires each Federal banking agency to use plain language in all of its 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.

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.[26] 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 burdens, and further measures the FDIC will take to address issues that were identified.[27] As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart G, this final 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),[28] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[29]

As previously stated, the final rule removes part 390, subpart G, from the Code of Federal Regulations because, after careful review and consideration, the FDIC believes it is largely unnecessary, redundant, or duplicative of existing statutes and regulations. In addition, the final also includes amendments to the FDIC's part 338 to make it applicable to State savings associations, introduce new definitions, and to make technical conforming edits. These amendments do not impose any additional reporting, disclosure, or other requirements on IDIs. Because the final rule does not impose additional reporting, disclosure, or other new requirements on IDIs, section 302 of the RCDRIA does not apply.

F. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule. If a rule is deemed a ''major rule'' [30] by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[31]

The Congressional Review Act (CRA) 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

[25] 12 U.S.C. 4809.

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

[27] 82 FR 15900 (March 30, 2017).

[28] 12 U.S.C. 4802(a).

[29] 12 U.S.C. 4802(b).

[30] 5 U.S.C. 801 *et seq.*

[31] 5 U.S.C. 801(a)(3).

based enterprises in domestic and export markets.[32]

The OMB has determined that this final rule is not a ''major rule'' for purposes of the CRA. 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.

List of Subjects

12 CFR Part 338

Aged, Banks, banking, Civil rights, Credit, Fair housing, Individuals with disabilities, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination, Signs and symbols.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the FDIC amends 12 CFR parts 338 and 390 as follows:

■ 1. Revise part 338 to read as follows:

PART 338—FAIR HOUSING

Subpart A—Advertising

Subpart B—Recordkeeping

Authority: 12 U.S.C. 1817, 1818, 1819, 1820(b), 2801 *et seq.;* 15 U.S.C. 1691 *et seq.;* 42 U.S.C. 3605, 3608; 12 CFR parts 1002, 1003; 24 CFR part 110.

Subpart A—Advertising

§ 338.1 Purpose.

The purpose of this subpart is to prohibit FDIC-supervised institutions from engaging in discriminatory advertising with regard to residential real estate-related transactions. This subpart also requires FDIC-supervised institutions to publicly display either the Equal Housing Lender poster set forth in § 338.4(b) or the Equal Housing Opportunity poster prescribed by 24 CFR part 110 of the United States Department of Housing and Urban Development's regulations. This subpart enforces section 805 of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–3619 (Fair Housing Act), as amended by the Fair Housing Amendments Act of 1988.

§ 338.2 Definitions applicable to this subpart.

For purposes of this subpart:

(a) *Bank* means an insured state nonmember bank as defined in section 3 of the Federal Deposit Insurance Act.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *FDIC-supervised institution* means either a bank or a State savings association.

(d) *Handicap* means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(e) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person; and

(3) The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(f) *State savings association* has the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

§ 338.3 Nondiscriminatory advertising.

(a) Any FDIC-supervised institution which directly or through third parties engages in any form of advertising of any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format utilized, that the FDIC-supervised institutions makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status.

(1) With respect to written and visual advertisements, this paragraph (a) may be satisfied by including in the advertisement a copy of the logotype with the Equal Housing Lender legend contained in the Equal Housing Lender poster prescribed in § 338.4(b) or a copy of the logotype with the Equal Housing Opportunity legend contained in the Equal Housing Opportunity poster prescribed in 24 CFR 110.25(a) of the United States Department of Housing and Urban Development's regulations.

(2) With respect to oral advertisements, this paragraph (a) may be satisfied by a statement, in the spoken text of the advertisement, that the FDIC-supervised institution is an ''Equal Housing Lender'' or an ''Equal Opportunity Lender.''

(3) When an oral advertisement is used in conjunction with a written or visual advertisement, the use of either of the methods specified in paragraphs (a)(1) and (2) of this section will satisfy the requirements of this paragraph (a).

(b) No advertisement shall contain any words, symbols, models, or other forms of communication which express, imply, or suggest a discriminatory preference or policy of exclusion in violation of the provisions of the Fair Housing Act or the Equal Credit Opportunity Act.

§ 338.4 Fair housing poster.

(a) Each FDIC-supervised institution engaged in extending loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall conspicuously display either the Equal Housing Lender poster set forth in paragraph (b) of this section or the Equal Housing Opportunity poster prescribed by 24 CFR 110.25(a) of the United States Department of Housing and Urban Development's regulations, in a central location within the FDIC-supervised institution where deposits are received or where such loans are made, in a manner clearly visible to the general public entering the area, where the poster is displayed.

(b) The Equal Housing Lender Poster shall be at least 11 by 14 inches in size and have the following text:

[32] 5 U.S.C. 804(2).

We Do Business in Accordance with Federal Fair Lending Laws.

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18) TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410.

For processing under the Federal Fair Housing Act

AND TO:

Federal Deposit Insurance Corporation, Consumer Response Center, [Insert address for the Consumer Response Center stated on the FDIC's website at *www.fdic.gov*]

For processing under the FDIC Regulations.

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age;
- Because income is from public assistance; or
- Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Federal Deposit Insurance Corporation, Consumer Response Center, [Insert address for the Consumer Response Center stated on the FDIC's website at *www.fdic.gov*]

(c) The Equal Housing Lender Poster specified in this section was adopted under 24 CFR 110.25(b) of the United States Department of Housing and Urban Development's rules and regulations as an authorized substitution for the poster required in § 110.25(a) of those rules and regulations.

Subpart B—Recordkeeping

§ 338.5 Purpose.

The purpose of this subpart is two-fold. First, this subpart notifies all FDIC-supervised institutions of their duty to collect and retain certain information about a home loan applicant's personal characteristics in accordance with 12 CFR part 1002 (Regulation B of the Bureau of Consumer Financial Protection) in order to monitor an institution's compliance with the Equal Credit Opportunity Act of 1974 (15 U.S.C. 1691 *et seq.*). Second, this subpart notifies certain FDIC-supervised institutions of their duty to maintain, update, and report a register of home loan applications in accordance with 12 CFR part 1003 (Regulation C of the Bureau of Consumer Financial Protection), which implements the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

§ 338.6 Definitions applicable to this subpart.

For purposes of this subpart—

(a) *Bank* means an insured State nonmember bank as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

(b) *Controlled entity* means a corporation, partnership, association, or other business entity with respect to which a bank possesses, directly or indirectly, the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, or otherwise.

(c) *FDIC-supervised institution* means either a bank or a State savings association.

(d) *State savings association* has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

§ 338.7 Recordkeeping requirements.

All FDIC-supervised institutions that receive an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence where the extension of credit will be secured by the dwelling shall request and retain the monitoring information required by Regulation B of the Bureau of Consumer Financial Protection (12 CFR part 1002).

§ 338.8 Compilation of loan data in register format.

FDIC-supervised institutions and other lenders required to file a Home Mortgage Disclosure Act loan/application register (LAR) with the Federal Deposit Insurance Corporation shall collect, record and report such LAR in accordance with Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003).

§ 338.9 Mortgage lending of a controlled entity.

Any bank which refers any applicants to a controlled entity and which purchases any covered loan as defined in Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003) originated by the controlled entity, as a condition to transacting any business with the controlled entity, shall require the controlled entity to enter into a written agreement with the bank. The written agreement shall provide that the entity shall:

(a) Comply with the requirements of §§ 338.3, 338.4, and 338.7, and, if otherwise subject to Regulation C of the Bureau of Consumer Financial Protection (12 CFR part 1003), § 338.8;

(b) Open its books and records to examination by the Federal Deposit Insurance Corporation; and

(c) Comply with all instructions and orders issued by the Federal Deposit Insurance Corporation with respect to its home loan practices.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 2. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart G—[Removed and Reserved]

■ 3. Remove and reserve subpart G, consisting of §§ 390.140 through 390.150.

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. 2020–28452 Filed 2–2–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 390

RIN 3064–AF36

Removal of Transferred OTS Regulations Regarding Application Processing Procedures of State Savings Associations and Conforming Amendments to Other Regulations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule (final rule) to rescind and remove certain regulations transferred to the FDIC from the Office of Thrift Supervision (OTS) in 2011 pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These regulations generally concern the supervision and governance of State savings associations, including the application processing procedures for certain applications, notices and filings by State savings associations. In addition to the removal of our regulations, the FDIC is making technical changes to our regulations that do not currently apply to State savings associations. Following the rescission, the filing regulations pertaining to State savings associations and all other FDIC-supervised institutions will be substantially the same.

DATES: The final rule is effective March 5, 2021.

FOR FURTHER INFORMATION CONTACT: Donald Hamm, Special Advisor, (202) 898–3528, *dhamm@fdic.gov;* Shelli Coffey, Review Examiner, (312) 382–7539, *scoffey@fdic.gov,* Risk Management Supervision; Andrew B. Williams II, Counsel, (202) 898–3591, and *willimas@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objective

The policy objective of the final rule is to remove unnecessary and duplicative regulations in order to simplify and improve the public's understanding of the FDIC's regulations, and to promote parity between State savings associations and State nonmember banks by applying the same filing requirements to both classes of institutions. Thus, as further detailed in this section, the FDIC is rescinding and removing, from the Code of Federal Regulations (CFR), 12 CFR part 390, subpart F (subpart F).

As discussed below, the FDIC is making technical changes to certain sections of part 303. The rescission of subpart F, with the accompanying revisions to 12 CFR part 303, simplifies and streamlines the FDIC's regulations by removing unnecessary provisions that are adequately provided for in other existing statutes and regulations.

II. Background

A. The Dodd-Frank Act

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.[1] Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[3] provides the manner of treatment of all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,[4] on June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[5]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[6] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act)[7] and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act[8] revised the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act[9] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and insured State-licensed branches of foreign banks.

As noted, on July 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors issued a list of regulations of the former OTS that the FDIC would enforce with respect to State savings associations. On that same date, the FDIC Board reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[10] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS regulations into other FDIC regulations, amending them, or rescinding them, as appropriate.[11]

B. 12 CFR Part 516—Application Processing Procedures

A subset of the regulations transferred to the FDIC from the OTS concern application processing procedures. The OTS regulations, formerly found at 12 CFR part 516, §§ 516.1 through 516.290, were transferred to the FDIC with only nomenclature changes and now comprise part 390, subpart F (subpart F). Subpart F governs the FDIC's procedures for processing applications, notices or filings under part 390 and, prior to its rescission, part 391 for State savings associations.[12]

III. The Proposal

A. Removal of Part 390, Subpart F—Application Processing Procedures

Section 316(b)(3) of the Dodd-Frank Act in pertinent part, provides that the regulations of the former OTS, as they apply to State savings associations, will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law.[13] Consistent with the FDIC's stated intention to evaluate transferred OTS regulations before taking action on them, the FDIC conducted a careful review of subpart F and related Federal statutes, regulations, and statements of policy relevant to

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

[2] Codified at 12 U.S.C. 5411.

[3] Codified at 12 U.S.C. 5414(b).

[4] Codified at 12 U.S.C. 5414(c).

[5] 76 FR 39247 (July 6, 2011).

[6] Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1811 *et seq.*

[8] Codified at 12 U.S.C. 5412(c)(1).

[9] 12 U.S.C. 1813(q).

[10] 76 FR 47652 (Aug. 5, 2011).

[11] *See* 76 FR 47653.

[12] 12 CFR part 390, subpart F.

[13] 12 U.S.C. 5414(b)(3).

subordinate organizations of State savings associations.

On October 15, 2020, the FDIC published a notice of proposed rulemaking (NPR or proposal) regarding the removal of subpart F, which concerns the FDIC's procedures for processing applications, notices or filings under part 390 and, prior to its rescission, part 391 for State savings associations.[14] The NPR proposed removing subpart F from the Code of Federal Regulations (CFR) because, after careful review and consideration, the FDIC believed the provisions contained in subpart F to be unnecessary in light of the applicability of other provisions of Federal statutes and regulations, specifically 12 CFR part 303 (part 303) or guidance that produce substantially the same supervisory results. The FDIC received no comments on those aspects of the proposal.

Rather than restate the rationale for rescission and removal of each section of subpart F, the reader is referred to the explanations for rescission and removal provided in the NPR,[15] which the FDIC references here as the basis for finalizing the regulations as proposed. In the NPR the FDIC also proposed to amend certain sections of part 303, subparts A, K, and M, of the FDIC's regulations. Those amendments are discussed below.

B. Revision of Certain Sections of Part 303, Filing Procedures

Part 303 of the FDIC Rules and Regulations (12 CFR part 303) provides a framework for filing requirements for various applications, notices, and requests (collectively, ''filings'' as defined in § 303.2(s)) (12 CFR 303.2(s)). Subpart A of part 303, Rules of General Applicability, prescribes the general procedures for submitting filings to the FDIC that are required by statute or regulation. This subpart also prescribes the procedures to be followed by the FDIC, applicants, and interested parties during the process of considering a filing, including public notices and comment when required. This subpart explains the availability of expedited processing for eligible depository institutions (defined in § 303.2(r)) for matters subject to expedited processing. Specific filings are detailed in subpart B through subpart M of part 303.

The FDIC is making technical changes in certain sections of part 303, subparts A, K, and M. The revisions make those sections applicable on their terms to State savings associations.

1. Section 303.7—Public Notice Requirements

Section 5 of the FDI Act,[16] generally and in part, provides that any depository institution engaged in the business of receiving deposits other than trust funds, upon application to and examination by the FDIC and approval by its Board of Directors, may become an insured depository institution. The term ''depository institution'' means any bank or savings association pursuant to section 3(c)(1) of the FDI Act.[17] Subpart B—Deposit Insurance, of part 303 of the FDIC regulations, sets forth the procedures for applying for deposit insurance by certain applicants, including for a proposed depository institution under section 5 of the FDI Act, and applies to savings associations.[18] Section 303.23(a) of subpart B states that, in addition to other requirements, the applicant ''shall publish a notice as prescribed in § 303.7 in a newspaper of general circulation in the community in which the main office of the depository institution is or will be located.''

Subpart F of part 390 of the FDIC regulations addresses public notice requirements, stating that §§ 390.111 through 390.115 apply whenever a FDIC regulation requires an applicant to follow the public notice procedures.[19] The FDIC is rescinding §§ 390.111 through 390.115 because part 303 substantively addresses the same requirements, including, for deposit insurance applications, §§ 303.7, subpart A, and 303.23, subpart B.

Section 303.7 of the FDIC regulations, of part 303, subpart A, addresses public notice requirements for filings with respect to mergers, changes in control, and requests for deposit insurance. With one exception, § 303.7 makes no distinction between banks and savings associations. However, § 303.7(c)(1)(i) states, in part: ''[i]n the case of an application for deposit insurance for a de novo *bank* (emphasis added), include the names of all organizers or incorporators.'' The NPR proposed to amend § 303.7(c)(1)(i) to replace ''bank'' with ''depository institution,'' a term used elsewhere in the section. The revision would clarify that § 303.7(c)(1)(i) is applicable to savings associations, consistent with section 5 of the FDI Act and part 303, including subpart B—Deposit Insurance, and would make the requirement consistent for both types of depository institutions.

The FDIC received no comments on these aspects of the proposal.

2. Section 303.15—Certain Limited Liability Companies Deemed Incorporated Under State Law

Pursuant to section 5 of the FDI Act, the FDIC may approve deposit insurance for certain depository institutions. One of the statutory requirements for a State bank to be eligible for Federal deposit insurance is that it must be ''incorporated under the laws of any State.''[20] That requirement effectively limited the approval of deposit insurance to State banks chartered under the traditional corporate form, despite the creation and increased use of limited liability entities other than corporations, such as limited liability companies (LLCs). Section 303.15 of the FDIC regulations is found in part 303, subpart A. Section 303.15(a) was promulgated to provide that a bank chartered as an LLC under State law would be deemed ''incorporated'' if it met four requirements, thus permitting the entity to be eligible to apply and be approved for deposit insurance.[21] To be deemed incorporated, the LLC must possesses the four traditional corporate characteristics of perpetual succession, centralized management, limited liability, and free transferability of interests.[22]

Section 303.15(b) further provides that, for purposes of the FDI Act and the FDIC regulations, the terms ''stockholder,'' ''shareholder,'' ''director,'' ''officer,'' ''voting stock,'' ''voting shares,'' and ''voting securities,'' for banks chartered as LLCs, shall encompass or have substantially the same meaning as those terms have for banks chartered as corporations. The definition of ''State savings association'' under the FDI Act, which uses the phrase ''organized and operating according to the laws of the State'' instead of ''incorporated,'' does not limit State savings associations to the corporate charter form (absent a state requirement).[23] In order to clarify that the terms in § 303.15(b) apply to savings association chartered as LLCs as they do for banks so chartered, the NPR proposed to revise references to ''bank'' in § 303.15(b) to ''depository institution.'' The revisions would make the terms ''stockholder,'' ''shareholder,'' ''director,'' ''officer,'' ''voting stock,'' ''voting shares,'' and ''voting securities,'' with respect to savings associations

[14] 85 FR 65270 (Oct. 15, 2020).

[15] *Id.*

[16] 12 U.S.C. 1815.

[17] 12 U.S.C. 1813(c)(1).

[18] 12 CFR 303.20.

[19] 12 CFR 390.111.

[20] 12 U.S.C. 1813(a)(2).

[21] *See* 68 FR 7308, February 13, 2003.

[22] 12 CFR 303.15(a)(1) through (4). *See also,* 68 FR 7308.

[23] 12 U.S.C. 1813(b)(3).

chartered as LLCs, encompass or have substantially the same meaning with respect to savings associations chartered as LLCs as for those chartered as corporations.

The FDIC received no comments on these aspects of the proposal.

3. Subpart K—Prompt Corrective Action: Section 303.204—Applications for Acquisitions, Branching, and New Lines of Business; Section 303.205—Applications for Bonuses and Increased Compensation for Senior Executive Officers

Part 303 of the FDIC's regulations includes procedures to implement the filing requirements for certain activities or transactions relative to undercapitalized or weaker depository institutions, and implements certain elements of section 38 of the FDI Act.[24] Section 38 applies to all insured depository institutions. Among other things, section 38 generally prohibits an insured depository institution, without application and approval, from engaging in acquisitions, branching, or new lines of business, if the institution is undercapitalized or weaker, significantly undercapitalized, or critically undercapitalized.[25] It also prohibits an insured depository institution, without application and approval, from payment of bonuses or increased compensation to senior executive officers, if the institution is significantly or critically undercapitalized, or is undercapitalized and has failed to submit or implement an acceptable capital restoration plan.[26]

Sections 303.204 and 303.205 of the FDIC regulations implement the provisions of section 38 described above. Section 303.204 requires any insured State nonmember bank and any insured branch of a foreign bank that is undercapitalized or significantly undercapitalized, and any critically undercapitalized insured depository institution, to submit an application to engage in acquisitions, branching, or new lines of business. This section clarifies that new lines of business include ''any new activity exercised which, although it may be permissible, has not been exercised by the institution.'' It also specifies the content of the filing, including information regarding whether the institution's primary Federal regulator has accepted the institution's capital restoration plan, and whether the institution has implemented that plan.

Section 303.205 requires any insured State nonmember bank or insured branch of a foreign bank that is (i) significantly undercapitalized or critically undercapitalized, or (ii) is undercapitalized and has failed to submit or implement an acceptable capital restoration plan, to submit an application to pay a bonus or increase compensation to any senior executive officer. The section specifies the content of the filing, including information regarding the acceptance and implementation of the institution's capital restoration plan.

Although section 38 and other sections of subpart K of part 303 by their terms apply to all insured depository institutions, § 303.204, in part, and § 303.205 apply by their terms only to insured State nonmember banks and insured branches of foreign banks. The NPR proposed to revise §§ 303.204 and 303.205 to make those sections expressly apply to State savings associations to the same extent as they do to insured State nonmember banks. The final rule revises those sections to add ''insured State savings associations.''

The FDIC received no comments on these aspects of the proposal.

4. Section 303.249—Management Official Interlocks

Part 348 [27] of the FDIC regulations implements the Deposit Insurance Management Interlocks Act (Interlocks Act).[28] The purpose of the Interlocks Act and part 348 are to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations when the management interlock likely would have an anti-competitive effect.[29] The Interlocks Act is applicable to both insured State nonmember banks and State savings associations, and part 348 applies to management officials of FDIC-supervised institutions and their affiliates. With regard to insured State nonmember banks and State savings associations, the Interlocks Act provides the FDIC with administrative and enforcement authority under section 3206, as well as authority to prescribe regulations to carry out the Interlocks Act.[30]

Under section 13(k) of the FDI Act, and notwithstanding any provision of State law, the FDIC may authorize dual service that would otherwise be prohibited by the Interlocks Act upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, and that such authorization would lessen the risk to the FDIC.[31] Subpart F of part 390 does not apply to a transaction under section 13(k) of the FDI Act.[32]

As discussed above, the FDIC transferred various OTS regulations into FDIC regulations. One of the transferred OTS regulations governed OTS oversight of management official interlocks in the context of State savings associations. The OTS regulation, formerly found at 12 CFR part 563f, was transferred to the FDIC with only minor, nonsubstantive changes, and was found in the FDIC's regulations at 12 CFR part 390, subpart V (part 390, subpart V), entitled ''Management Official Interlocks.'' Before the transfer of the OTS regulations and continuing today as noted above, the FDIC's regulations contained part 348. After review and comparison of part 390, subpart V, and part 348, effective January 20, 2016, the FDIC rescinded part 390, subpart V, because the FDIC found it to be substantially redundant to existing part 348, considering technical conforming edits to part 348.[33]

However, § 303.249, found in part 303, subpart M, of the FDIC regulations, addresses the ''procedures to be followed by an insured State nonmember *bank* (emphasis added) to seek the approval of the FDIC to establish an interlock pursuant to'' the Interlocks Act, section 13(k) of the FDI Act, and part 348 of the FDIC regulations.[34] The NPR proposed to revise § 303.249(a) to insert, following ''bank'' in the language quoted immediately above, ''or an insured State savings association.'' The revision clarifies that State savings associations may use the procedures contained in § 303.249 to apply for approval to establish interlocks as provided therein.

The FDIC received no comments on these aspects of the proposal.

IV. The Final Rule

For the reasons stated herein and in the NPR, the FDIC is adopting the amendments as proposed.

V. Expected Effects

As of June 30, 2020, the FDIC supervised 3,270 depository

[24] 12 U.S.C. 1831*o*.

[25] See 12 U.S.C. 1831*o*(e)(4).

[26] *See* 12 U.S.C. 1831*o*(f)(4). 12 U.S.C. 1831*o*(f) contains additional, discretionary restrictions that may be imposed by a financial regulator.

[27] 12 CFR part 348.

[28] 12 U.S.C. 3201–3208.

[29] 12 CFR 348.1(b).

[30] 12 U.S.C. 3206, 3207.

[31] 12 U.S.C. 1823(k)(1)(A)(v).

[32] 12 CFR 390.100(b)(1).

[33] 80 FR 79252 (Dec. 21, 2015).

[34] 12 CFR 303.249(a).

institutions, of which 35 (1.1 percent) were State savings associations.[35] The final rule primarily affects regulations that govern State savings associations. Therefore, the final rule is expected to affect 35 FDIC-supervised institutions.

As previously discussed, the final rule rescinds part 390, subpart F, because most of its elements are duplicative of substantively similar provisions of FDIC regulations, principally part 303. Additionally, the final rule amends certain elements of part 303 so that the provisions are applicable to State savings associations. In doing so, the final rule makes elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary. As such, the FDIC does not believe the final rule will have substantive effects on State savings associations.

Section 390.100 sets forth application processing procedures for State savings associations. However, existing statutes[36] and regulations already ''prescribe the general procedures for submitting filings to the FDIC and the procedures to be followed by the FDIC, applicants and interested parties during the process of considering a filing''[37] for FDIC-supervised institutions, including State savings associations. Therefore, rescinding § 390.100 is not expected to have any substantive effects on State savings associations.

Section 390.101 specifies the criteria for determining which filings receive expedited treatment and which receive standard treatment. State savings associations are already subject to substantively similar requirements in §§ 303.2(r) and 303.11(c), as well as the substantive subparts of part 303 of the FDIC regulations. Therefore, rescinding § 390.101 is not expected to have any substantive effects on State savings associations.

Section 390.102 addresses the computation of time periods for State savings associations. State savings associations are subject to regulations that address the computation of relevant time periods at § 303.4 of the FDIC regulations. Therefore, rescinding § 390.102 is not expected to have any substantive effects on State savings associations.

Section 390.103 addresses pre-filing meetings and FDIC contacts for filings to acquire control of State savings associations. Pre-filing meetings are not addressed in FDIC regulations, but are addressed in the Applications Procedures Manual (APM), in which a substantively similar description of pre-filing meetings is given. Additionally, the APM states that a Case Manager will be assigned by the FDIC to the application in order to facilitate communication and engagement with the applicant. Therefore, the FDIC believes that rescinding § 390.103 is unlikely to have any substantive effects on State savings associations or change in control applicants.

Section 390.104 addresses certain requirements for business plans submitted by State savings associations under subpart F, which permits the FDIC to require additional business plan information during processing of the filing. Under part 303, business plans are required for certain filings, though the FDIC may request additional information for any filing. In this regard, the FDIC's review processes include, as appropriate, pre-filing and other activities to ensure institutions' understanding of the FDIC's filing requirements and information needs. In certain cases, the content for business plans is addressed in filing forms or other FDIC resources. For example, the Inter-agency Charter and Deposit Insurance Application Form contains detailed instructions for the development of the business plan; and those instructions may assist institutions when submitting business plans as part of other filings. The FDIC has also provided a Handbook for Organizers—Applying for Deposit Insurance, which aids all applicants for deposit insurance and includes sections on developing a business plan and business plan content. Generally, the FDIC believes it is appropriate to provide an institution with flexibility to tailor the content of the business plan to reflect its unique circumstances, strategies, and challenges. Therefore, in light of the discussion above, the FDIC believes that rescinding § 390.104 is unlikely to have any substantive effects on State savings associations or change in control applicants.

Section 390.105 addresses expedited and standard processing, as well as waiver requests for State savings associations. Expedited and standard processing, as well as waiver requirements, are encompassed in FDIC regulations applicable to State savings associations found throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.105 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.106 addresses the content of filings for State savings associations. It directs State savings associations to the applicable forms and the content requirements. The required content of filings is encompassed in FDIC regulations applicable to State savings associations throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.106 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.107 addresses application confidentiality for State savings associations. FDIC regulations found at § 303.8 and applicable to FDIC-supervised institutions, including State savings associations, includes confidential treatment regulations that are substantively similar to those in § 390.107. Therefore, the FDIC believes that rescinding § 390.107 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.108 addresses where to file applications, specifically providing regional office addresses. General application filing procedures for all FDIC-supervised institutions, including State savings associations, are encompassed in regulations found at § 303.3 of the FDIC regulations. Further, although specific regional office addresses are not included in the regulation, they are available on the FDIC's public website. Therefore, the FDIC believes that rescinding § 390.108 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.109 explains the application filing date. The FDIC does not have substantively similar regulations governing the filing date of an application. However, FDIC regulations operate on the basis of the date on which a substantially complete filing is submitted. Further, the FDIC's APM, which is accessible to all FDIC-supervised institutions, including State savings associations, addresses the date on which an application is considered to be substantively complete. Therefore, the FDIC believes that rescinding § 390.109 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.110 discusses amending or supplementing an application. The FDIC does not have substantively similar regulations governing amending or supplementing an application. However, the FDIC relies on determinations as to when an application is substantially complete. In addition, the FDIC's APM, which is applicable to all FDIC-supervised institutions, including State savings associations, addresses both substantially complete filings and those not substantially complete, as well as

[35] Call Report data, June 30 2020.

[36] 12 U.S.C. 1831a.

[37] 12 CFR 303.1.

how to supplement information. Further, the APM states that an applicant may modify and update an application throughout the review process until final disposition, and that applicants often supplement their applications throughout the review process. Therefore, the FDIC believes that rescinding § 390.110 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.111 through 390.115 address public notice requirements. FDIC-supervised institutions, including State savings associations, are subject to substantively similar public notice requirements in § 303.7 of the FDIC regulations and throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding §§ 390.111 through 390.115 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.116 through 390.120 address procedures for submission of public comments. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding procedures for submission of public comments in § 303.9 of the FDIC regulations and throughout various subparts and sections of part 303. Therefore, the FDIC believes that rescinding §§ 390.116 through 390.120 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.121 through 390.125 contain meeting procedures. Meetings are addressed generally in FDIC regulations found at 12 CFR 303.6 and 303.10 for FDIC-supervised institutions, including State savings associations. Although §§ 303.6 and 303.10 of the FDIC regulations are generally less specific than §§ 390.121 through 390.125, the FDIC believes the language in § 303.6 is generally inclusive of the substance of §§ 390.121 through 390.125 by stating that ''[t]he FDIC may examine or investigate and evaluate facts related to any filing under this chapter to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances.'' Therefore, the FDIC believes that rescinding §§ 390.121 through 390.125 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.126 addresses expedited treatment, including removal of the filing to standard processing, additional information requests, suspension of the processing period, and when the applicant can proceed with the activity if the FDIC has not acted. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements for matters receiving expedited treatment in § 303.11(c) of the FDIC regulations, as well as §§ 303.122 and 303.142. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC believes that rescinding § 390.126 is unlikely to have any substantive effects on State savings associations or future applicants.

Sections 390.127 and 390.128 address application completeness. The FDIC does not have corresponding regulations addressing application completeness. Instead, the application processing time periods under part 303 are triggered by the FDIC's receipt of a substantially complete filing.[38] The FDIC believes that the substantially complete filing step of part 303 permits the procedures for processing a filing under part 303, while essentially addressing the same issues, to be simpler and easier to navigate than those of §§ 390.127 and 390.128. Sections 303.3 and 303.11(e) of the FDIC regulations, as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. The FDIC's APM, which aids all FDIC-supervised institutions, including State savings associations, addresses both substantially complete filings and those not substantially complete. Therefore, the FDIC believes that rescinding §§ 390.127 and 390.128 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.129 addresses eligibility examinations, as well as the authority of the FDIC to require such examinations and to request additional information. Under § 303.6 of the FDIC regulations, the FDIC may examine or investigate and evaluate facts related to any filing to the extent necessary to reach an informed decision and take any action necessary or appropriate under the circumstances. Sections 303.3 and 303.11(e), as well as substantive subparts of part 303, provide the FDIC authority to require submission of additional information. Therefore, the FDIC believes that a separate eligibility determination provision is unneeded, and rescinding § 390.129 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.130 addresses potential FDIC requests for additional information or actions from applicants. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding potential FDIC requests for additional information or actions from applicants through various subparts and sections of part 303. Therefore, the FDIC believes that rescinding § 390.130 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.131 explains requirements to publish new public notices. FDIC-supervised institutions, including State savings associations, are subject to substantively similar requirements regarding publishing new public notices in § 303.7(f) of the FDIC regulations. Therefore, the FDIC believes that rescinding § 390.131 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.132 addresses suspension of an application. Part 303 has no such provision. However, the FDIC believes that situations envisioned by § 390.132 can be effectively addressed on a case-by-case basis without need of a regulation, or that a regulation is not needed because the processing period under part 303 does not begin until the FDIC receives a substantially complete filing and, thus, no suspension is necessary. Therefore, the FDIC believes that rescinding § 390.132 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.133 addresses the applicable review period for an application. The FDIC's part 303 regulations contain provisions that bear on the same issues and are similar in substantive effect as the § 390.133 provisions. Thus, while part 303 addresses review periods in a different manner than subpart F, the FDIC believes that the substantive effect is similar and that rescinding § 390.133 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.134 requires the FDIC to approve or deny an application before the expiration of the applicable review period, including any extensions, and notify the applicant, in writing, of its decision. If the FDIC does not act under paragraph (a)(1) of the section, the application is deemed approved. The FDIC's part 303 procedures do not contain such a requirement for applications (as opposed to some notice filings). However, when read in conjunction with § 390.133, the FDIC has significant, though not complete, discretion under subpart F to extend the

[38] 12 CFR 303.304.

review period for applications until a determination is issued. The substantial ability of the FDIC to extend the processing period under subpart F, to a great extent, renders any difference with part 303 immaterial. As such, the application review periods and notification procedures for State savings associations are subject to substantively similar requirements under both subpart F and part 303. Therefore, the FDIC believes that rescinding § 390.134 is unlikely to have any substantive effects on State savings associations or future applicants.

Section 390.135 addresses withdrawal if an application is not acted on within two calendar years. The FDIC does not have substantively similar regulations addressing withdrawal if an application is not acted on. However, the FDIC's APM, which aids all FDIC-supervised institutions, including State savings associations, states that the FDIC's goal is to act on filings as promptly as practical, while allowing appropriate time for review and evaluation. Additionally, the FDIC has established timeframes for processing each type of filing, which have been published in Financial Institution Letter 81–2018.[39] It is also, generally, the FDIC's practice to provide an applicant with an opportunity to withdraw its application if FDIC staff propose an unfavorable recommendation. Therefore, the FDIC believes that rescinding § 390.135 is unlikely to have any substantive effects on State savings associations or future applicants.

The final rule amends certain elements of part 303, specifically §§ 303.7(c)(1)(i) and 303.15(b)(1) through (4), so that the provisions are applicable to State savings associations. In so doing, the final rule makes elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary.

The final rule amends §§ 303.204 and 303.205 of part 303's subpart K (Prompt Corrective Action). Section 303.204 requires any insured State nonmember bank and any insured branch of a foreign bank that is undercapitalized or significantly undercapitalized, and any critically undercapitalized insured depository institution, to submit an application to engage in acquisitions, branching, or new lines of business. Section 303.205 requires any insured State nonmember bank or insured branch of a foreign bank that is (i) significantly undercapitalized or critically undercapitalized, or (ii) is undercapitalized and has failed to submit or implement an acceptable capital restoration plan, to submit an application to pay a bonus or increase compensation to any senior executive officer. The final rule makes these sections applicable to State savings associations. The provisions of section 38 of the FDI Act,[40] which establishes the statutory authority for §§ 303.204 and 303.205, contain the restrictions at issue and are applicable to all insured depository institutions. Thus, the final rule should not have a material impact on State savings associations.

Section 303.249 of the FDIC regulations addresses the ''procedures to be followed by an insured State nonmember bank to seek the approval of the FDIC to establish an interlock pursuant to'' the Interlocks Act, section 13(k) of the FDI Act, and part 348 of the FDIC regulations. The final rule amends § 303.249(a) to apply to State savings associations. Although the amendment sets forth more explicit requirements for State savings associations seeking approval for establishing an interlock, State savings associations would not realize any effects because they are already subject to the Interlocks Act, and part 348. Therefore, State savings associations would currently need to undertake similar procedures, and provide substantively similar information, to those outlined in § 303.249.

By removing duplicative or unnecessary regulations, the FDIC believes that the final rule will benefit State savings associations by clarifying regulations and improving the ease of references.

VI. Alternatives

The FDIC has considered alternatives to the rule, but believes the amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred to the FDIC certain powers, duties, and functions formerly performed by the OTS. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate and might later, as appropriate, rescind, amend, or incorporate the regulations into other FDIC regulations.

The FDIC has evaluated the existing regulations related to application processing procedures. The FDIC considered the status quo alternative of retaining the current regulations, but believes it would be procedurally complex and unnecessary for FDIC-supervised institutions to continue to refer to the separate sets of regulations. Therefore, the FDIC is amending the specified sections of part 303 and rescinding subpart F.

VII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (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 final rule rescinds and removes from FDIC regulations subpart F and makes technical revisions to certain sections of part 303. The final rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[41] 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.[42] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the final rule will not have

[39] *www.fdic.gov/news/financial-institution-letters/2018/fil18081.html.*

[40] 12 U.S.C. 1831*o*.

[41] 5 U.S.C. 601, *et seq.*

[42] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). ''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.

a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 2020, the FDIC supervised 3,270 insured depository institutions, of which 2,492 are considered small banking organizations for the purposes of RFA. The final rule primarily affects regulations that govern State savings associations.[43] There are 33 State savings associations considered to be small banking organizations for the purposes of the RFA.[44]

As previously discussed, the final rule rescinds part 390, subpart F, because most of its elements are duplicative of substantively similar provisions of FDIC regulations, specifically part 303. Additionally, the final rule amends §§ 303.7(c)(1)(i) and 303.15(b)(1) through (4) of part 303 so that the provisions are applicable to State savings associations. In doing so, the final rule makes elements of part 390, subpart F, substantively duplicative of the amended elements of part 303, and, therefore, unnecessary.

The final rule amends §§ 303.204 and 303.205 to make the provisions applicable to all insured depository institutions, including small, State savings associations. The revisions to §§ 303.204 and 303.205 provide a procedure for State savings associations to apply to the FDIC for relief from the restrictions of section 38 of the FDI Act.[45]

Finally, the final rule amends § 303.249(a) to make the provisions applicable to all insured depository institutions, including small, State savings associations. The FDIC believes that the amendment will not have any substantive effects on small, State savings associations because it will not result in any substantive change in the procedures for, or content associated with seeking approval for establishing an interlock. Thus, the FDIC does not believe the final rule will substantially impact small, FDIC-supervised institutions or future applicants.

The FDIC received no comments on the information provided in the Regulatory Flexibility Act section of the NPR.

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

C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[46] 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.[47]

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.[48]

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[49] requires each Federal banking agency to use plain language in all of its proposed and final regulations published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, the FDIC has sought to present the final rule to rescind subpart F and make technical revisions to certain sections of part 303 in a simple and straightforward manner.

E. 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.[50] 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 that will be taken to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as subpart F, the final rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA),[51] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, 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.[52]

As previously stated, the final rule removes subpart F from the Code of Federal Regulations because, after careful review and consideration, the FDIC believes it is largely unnecessary in light of the applicability of other provisions of Federal statutes and regulations, specifically 12 CFR part 303 (part 303) or guidance that produce substantially the same supervisory results. In addition, the final rule also includes amendments to certain sections of part 303, subparts A, K, and M, of the FDIC's regulations make those sections applicable by their terms to State savings associations. Those amendments do not impose any additional reporting, disclosure, or other requirements on IDIs. Because the final rule does not impose additional reporting, disclosure, or other new requirements on IDIs, section 302 of the RCDRIA does not apply.

[43] FDIC Call Report, March 31, 2020.

[44] *Id.*

[45] 12 U.S.C. 1831*o*.

[46] 5 U.S.C. 801 *et seq.*

[47] 5 U.S.C. 801(a)(3).

[48] 5 U.S.C. 804(2).

[49] Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

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

[51] 12 U.S.C. 4802(a).

[52] 12 U.S.C. 4802.

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 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR parts 303 and 390 as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1463, 1467a, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831i, 1831e, 1831o, 1831p–1, 1831w, 1831z, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5412; 15 U.S.C. 1601–1607.

■ 2. Revise § 303.7(c)(1) to read as follows:

§ 303.7 Public notice requirements.

* * * * *

(c) * * *

(1) The public notice referred to in paragraph (a) of this section shall consist of the following:

(i) In the case of an application for deposit insurance for a de novo depository institution, include the names of all organizers or incorporators. In the case of an application to establish a branch, include the location of the proposed branch or, in the case of an application to relocate a branch or main office, include the current and proposed address of the office. In the case of a merger application, include the names of all parties to the transaction. In the case of a notice of acquisition of control, include the name(s) of the acquiring parties. In the case of an application to relocate an insured branch of a foreign bank, include the current and proposed address of the branch.

(ii) Type of filing being made;

(iii) Name of the depository institution(s) that is the subject matter of the filing;

(iv) That the public may submit comments to the appropriate FDIC regional director;

(v) The address of the appropriate FDIC office where comments may be sent (the same location where the filing will be made);

(vi) The closing date of the public comment period as specified in the appropriate subpart of this part; and

(vii) That the nonconfidential portions of the application are on file in the appropriate FDIC office and are available for public inspection during regular business hours; photocopies of the nonconfidential portion of the application file will be made available upon request.

* * * * *

■ 3. Revise § 303.15(b) to read as follows:

§ 303.15 Certain limited liability companies deemed incorporated under State law.

* * * * *

(b) For purposes of the Federal Deposit Insurance Act and this chapter:

(1) Each of the terms ''stockholder'' and ''shareholder'' includes an owner of any interest in a depository institution chartered as an LLC, including a member or participant;

(2) The term ''director'' includes a manager or director of a depository institution chartered as an LLC, or other person who has, with respect to such a depository institution, authority substantially similar to that of a director of a corporation;

(3) The term ''officer'' includes an officer of a depository institution chartered as an LLC, or other person who has, with respect to such a depository institution, authority substantially similar to that of an officer of a corporation; and

(4) Each of the terms ''voting stock,'' ''voting shares,'' and ''voting securities'' includes ownership interests in a depository institution chartered as an LLC, as well as any certificates or other evidence of such ownership interests.

■ 4. Revise § 303.204 to read as follows:

§ 303.204 Applications for acquisitions, branching, and new lines of business.

(a) *Scope.* (1) Any insured State nonmember bank, any insured State savings association, and any insured branch of a foreign bank which is undercapitalized or significantly undercapitalized, and any insured depository institution which is critically undercapitalized, shall submit an application to engage in acquisitions, branching or new lines of business.

(2) A new line of business will include any new activity exercised which, although it may be permissible, has not been exercised by the institution.

(b) *Content of filing.* Applications shall describe the proposal, state the date the institution's capital restoration plan was accepted by its primary Federal regulator, describe the institution's status in implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. If the FDIC is not the applicant's primary Federal regulator, the application also should state whether approval has been requested from the applicant's primary Federal regulator, the date of such request and the disposition of the request, if any. If the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (mergers and branches) (12 U.S.C. 1828 (c) or (d)), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*).

■ 5. Revise § 303.205(a) to read as follows:

§ 303.205 Applications for bonuses and increased compensation for senior executive officers.

(a) *Scope.* Any insured State nonmember bank, insured State savings association, or insured branch of a foreign bank that is significantly or critically undercapitalized, or any insured State nonmember bank, any insured State savings association, or any insured branch of a foreign bank that is undercapitalized and which has failed to submit or implement in any material respect an acceptable capital restoration plan, shall submit an application to pay a bonus or increase compensation for any senior executive officer.

* * * * *

■ 6. Revise § 303.249(a) to read as follows:

§ 303.249 Management official interlocks.

(a) *Scope.* This section contains the procedures to be followed by an insured State nonmember bank or an insured State savings association to seek the approval of FDIC to establish an interlock pursuant to the Depository Institutions Management Interlocks Act (12 U.S.C. 3207), section 13 of the FDI Act (12 U.S.C. 1823(k)), and part 348 of this chapter.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

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

Authority: 12 U.S.C. 1819.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart F—[Removed and Reserved]

■ 8. Remove and reserve subpart F, consisting of §§ 390.100 through 390.135.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

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

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–28453 Filed 2–2–21; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 362 and 390

RIN 3064–AF37

Removal of Transferred OTS Regulations Regarding Certain Subordinate Organizations of State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove rules from the Code of Federal Regulations (CFR) regulations titled *Subordinate Organizations* that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding subordinate organizations of State savings associations because the FDIC has determined that the requirements for State savings association subordinate organizations included therein are substantially similar to the requirements for State savings associations and their subsidiaries set forth by certain sections of the Federal Deposit Insurance Act (FDI Act) and its implementing regulations.

DATES: The final rule is effective on March 5, 2021.

FOR FURTHER INFORMATION CONTACT: Donald Hamm, Special Advisor, (202) 898–3528, *dhamm@fdic.gov;* or Shelli Coffey, Review Examiner, (312) 382–7539, *scoffey@fdic.gov,* Risk Management and Applications, Division of Risk Management Supervision; Suzanne Dawley, Counsel, *sudawley@fdic.gov; or* Karlyn J. Hunter, Counsel, *khunter@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objective

The policy objective of the final rule is to simplify the FDIC's regulations by removing unnecessary regulations and realigning existing regulations in order to improve the public's understanding of the rules and to improve the ease of the public's reference to them. Thus, as further detailed in this section, the FDIC is rescinding and removing from the CFR rules entitled *Subordinate Organizations* (12 CFR part 390, subpart O) applicable to State savings associations.[1] Pursuant to subpart O, the FDIC may, at any time, limit a State savings association's investment in their subordinate organizations, or may limit or refuse to permit any activities of any of these entities for supervisory, legal, or safety and soundness reasons.[2]

Subpart O includes definitions related to State savings association subsidiaries,[3] a requirement for the parent State savings association and its subsidiaries to maintain separate corporate identities,[4] a prior notice requirement for a State savings association seeking to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary,[5] requirements related to the issuance of securities by a subsidiary,[6] and requirements for the exercise of salvage power by a State savings association.[7]

The FDIC has determined that the requirements for State savings association subordinate organizations set forth in subpart O are substantially similar to requirements of section 28 of the FDI Act and its implementing regulations, 12 CFR part 362 of the FDIC's Rules and Regulations; and section 37 of the FDI Act.[8] Therefore, the FDIC is rescinding and removing subpart O and will apply part 362, subpart C and subpart D, as appropriate, to achieve substantially similar supervisory results for State savings associations and subsidiaries as have been obtained through the application of subpart O.

[1] 12 CFR part 390, subpart O.

[2] 12 CFR 390.250.

[3] 12 CFR 390.251.

[4] 12 CFR 390.252.

[5] 12 CFR 390.253.

[6] 12 CFR 390.254.

[7] 12 CFR 390.255.

[8] 12 U.S.C. 1831e(a); 12 CFR part 362, subparts C and D; 12 U.S.C. 1831n(a).

II. Background

The Dodd-Frank Act,[9] signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.[10] Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[11] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations; the Office of the Comptroller of the Currency (OCC), as to Federal savings associations; and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[12] provides the manner of treatment of all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,[13] on June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a joint notice in the **Federal Register** on July 6, 2011.[14]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[15] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act[16] and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act[17] revised the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act[18] to add State

[9] 12 U.S.C. 5301 *et seq.*

[10] 12 U.S.C. 5411.

[11] *Id.*

[12] 12 U.S.C. 5414(b).

[13] 12 U.S.C. 5414(c).

[14] 76 FR 39246 (July 6, 2011).

[15] 12 U.S.C. 5412(b)(2)(B)(i)(II).

[16] 12 U.S.C. 1811 *et seq.*

[17] 12 U.S.C. 5412(c)(1).

[18] 12 U.S.C. 1813(q).

savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC is designated as the ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

As noted, on July 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and re-designated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[19] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.[20]

The final rule adopts, without change, the notice of proposed rulemaking (NPR) published in the **Federal Register** on October 26, 2020, which received no comments.

III. The Proposed Rule

On October 26, 2020, the FDIC published an NPR regarding the removal of part 390, subpart O (formerly OTS's 12 CFR part 559),[21] which generally addresses subordinate organizations of State savings associations.[22] The OTS adopted part 559, titled *Subordinate Organizations,* in 1996 to update and streamline its regulations and statements of policy concerning subsidiaries and other subordinate organizations in which savings associations have ownership interests (including operating subsidiaries and service corporations) and equity investments (including pass-through investments).[23] Part 559 consolidated all OTS regulations affecting thrift subsidiaries in order to make it easier for savings associations to find and use these regulations. The former OTS rule was transferred to the FDIC with only nominal changes and is found in the FDIC's rules at subpart O, entitled *Subordinate Organizations.*[24]

The NPR proposed removing subpart O, because, after careful review and consideration, the FDIC believes it is duplicative of substantially similar FDIC statutory and regulatory provisions that produce the same supervisory result for an insured State savings association as subpart O.[25]

Section 28 of the FDI Act prohibits a State savings association from engaging as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless the FDIC has determined the activity would pose no significant risk to the Deposit Insurance Fund (DIF); and the State savings association is, and continues to be, in compliance with the capital standards set forth in section 5(t) of the Home Owners Loan Act (HOLA).[26] Pursuant to section 18(m) of the FDI Act, a State savings association must file a notice with the FDIC prior to establishing, acquiring or engaging in new activities of a subsidiary.[27]

The NPR proposed using 12 CFR part 362, *Activities of Insured State Banks and Insured Savings Associations,* to provide a substantially similar process for an insured State savings association, or its subsidiary, to apply for prior consent from the FDIC to engage in certain activities, that are not otherwise prohibited by Federal or State law, while reaching substantially the same result as provided in subpart O without the burden of referring to a duplicative set of regulations. Part 362, which includes subparts C and D, is issued pursuant to several FDIC authorities, including the FDIC's general rulemaking authority pursuant to section 9(a)(Tenth) and section 28 of the FDI Act, the FDIC's statutory authority over the activities of State savings associations and subsidiaries, that are substantially similar to the authorizing statutes pursuant to which subpart O was issued.

Subpart C of part 362 governs the activities of insured State savings associations and implements section 28(a) of the FDI Act, which restricts and prohibits insured State savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for a Federal savings association and their service corporations. Subpart D of part 362 governs acquiring, establishing, or conducting new activities through a subsidiary by an insured State savings association, and implements section 18(m) of the FDI Act, which requires that prior notice be given to the FDIC when an insured savings association establishes or acquires a subsidiary or engages in any new activity in a subsidiary. In doing so it applies the definitions of § 362.2 unless otherwise indicated. The phrase ''activity permissible for a Federal savings association'' means any activity authorized for a Federal savings association under any statute including HOLA,[28] as well as activities recognized as permissible for a Federal savings association in regulations issued by the OCC or in bulletins, orders or written interpretations issued by the OCC, or by the former OTS until modified, terminated, set aside, or superseded by the OCC.[29]

Rather than restate the rationale for the rescission and removal of each section of subpart O, the reader is referred to the fulsome explanations for the rescission and removal provided in the NPR,[30] which the FDIC references here as the basis for finalizing the regulations as proposed. The regulations or statutes that the FDIC expects State savings associations and subsidiaries to refer to after the removal of subpart O are briefly discussed below.

A. Section 390.251—Definitions

Section 390.251 is a definition section related to subordinate organizations. Included in the definitions section are: *Control, GAAP-consolidated subsidiary, lower-tier entity, ownership interest, subordinate organization,* and, *subsidiary.* The *control* definition is a cross-reference to the removed OTS § 391.41 definition,[31] which provided that a controlling shareholder is any person who, directly or indirectly, or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company, or controls in any manner the election or appointment of a majority of the company's board of directors.[32] The FDIC proposed to apply the § 362.2(e) *control* definition which is consistent with the *control* definition applicable to service companies of Federal savings associations which

[19] 76 FR 47652 (Aug. 5, 2011).

[20] *Id.*

[21] 12 CFR part 390, subpart O.

[22] 85 FR 67684 (Oct. 26, 2020).

[23] 61 FR 66561, 66562 (Dec. 18, 1996).

[24] 12 CFR part 390, subpart O.

[25] 85 FR 67684, 67686 (Oct. 26, 2020).

[26] 12 U.S.C. 1831e(a), referencing 12 U.S.C. 1463 *et seq.*

[27] 12 U.S.C. 1828(m).

[28] 12 U.S.C. 1463 *et seq.*

[29] 12 CFR 362.9(a).

[30] 85 FR 67684 (Oct. 26, 2020).

[31] The FDIC rescinded the *control* definition at § 391.41 as part of its 2015 *Filing Requirements and Processing Procedures for Changes in Control with respect to State Nonmember Banks and State Savings Associations* rulemaking. 80 FR 65889 (Oct. 28, 2015).

[32] 12 CFR 391.41 (2015).

references the FRB's 12 CFR part 225, Regulation Y.[33]

The definition of *equity investment* in § 362.2(g) is broader than the definition of *ownership interest* in § 390.251, which means any equity interest in a business organization, limited or general partnership interests, or shares in a limited liability company. Similarly, the definition of *subsidiary* pursuant to § 362.2(r) is substantially similar to the subsidiary definition in § 390.251. The distinction is that § 362.2(r) defines a *subsidiary* as ''any company that is owned or controlled directly or indirectly by one or more insured depository institutions,'' rather than only by a State savings association. Therefore, the State savings associations would refer to those definitions in part 362 after subpart O was removed from the CFR.

A separate definition for *GAAP-consolidated subsidiary* is unnecessary as State savings association reports and financial statements are required to be uniform and consistent with U.S. generally accepted accounting principles (GAAP) pursuant to section 37 of the FDI Act and section 4(b) of HOLA.[34] Further, the instructions to the Consolidated Reports of Condition and Income (Call Report) state that the regulatory reporting requirements applicable to the Call Report shall conform to GAAP as set forth in the Financial Accounting Standards Board's Accounting Standards Codification.[35] Because State savings associations have existing statutory directives to use GAAP in reporting and financial statements, eliminating a substantially similar regulation regarding GAAP-consolidated subsidiaries likely would not affect the quality of State savings association reporting and financial statements.

B. Section 390.252—How must separate corporate entities be maintained?

The core eligibility requirements in § 362.4(c) describe corporate separateness in the context of the State-chartered depository institution-subsidiary. The eligible subsidiary requirements in § 362.4(c)(2)—which are more detailed than eligible subsidiary requirements of § 390.252—are designed specifically for the bank/subsidiary relationship, and provide for separation between the State-chartered depository institution and its subsidiary to lessen the possibility of piercing the corporate veil; deduction of the State-chartered depository institution investment in the subsidiary to segregate the capital supporting the State-chartered depository institution from the capital supporting the subsidiary; and limitations on the State-chartered depository institution's investment in the subsidiary and on transactions with the subsidiary to ensure transactions are arms-length.[36] The eligible subsidiary requirements are also incorporated into § 362.13. Section 362.13 permits a State savings association that previously filed an application, and obtained the FDIC's consent to engage in an activity or to acquire or retain an investment in a service corporation engaging as principal in an activity, to continue the activity or retain the investment without seeking the FDIC's consent, provided the State savings association and the service corporation, if applicable, continue to meet the conditions and restrictions of approval if the insured State savings association and any applicable service corporation meet the requirements of § 362.4(c)(2).[37]

The provisions of § 362.4(c)(2) that are duplicative of § 390.252 require that an eligible subsidiary: (1) Meet applicable statutory or regulatory capital requirements and have sufficient operating capital for normal obligations that are reasonably foreseeable for a business of its size and character; (2) be physically separate and distinct in its operations from the operations of the state-chartered depository institution; (3) maintain separate accounting and other business records; (4) observe separate business entity formalities; (5) conduct business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the State-chartered depository institution; and (6) that the State-chartered depository institution is not responsible for, and does not guarantee, the obligations of the subsidiary.[38]

State savings associations and service corporations that qualify as eligible depository institutions and eligible subsidiaries pursuant to § 362.4(c) maintain separate corporate identities, which should sufficiently insulate State savings associations from the liabilities of subsidiaries.

C. Section 390.253—What notices are required to establish or acquire a new subsidiary or engage in new activities through a subsidiary?

This section provides that such a notice must contain all of the information required under § 362.15, is subject to FDIC objection, and must be filed at least 30 days prior to the establishment or acquisition of a subsidiary or commencement of a new activity through a subsidiary. The notice requirements of § 362.15 are substantially similar to the transferred OTS notice requirement in § 390.253.

The proposal included a technical amendment to remove references to Federal savings association notice requirements in § 362.15. Section 18(m) of the FDI Act, as amended by section 363(7) of the Dodd-Frank Act,[39] no longer requires Federal savings associations to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to commencement of a new activity in a subsidiary controlled by a Federal savings association.[40] State savings associations must continue to notify the FDIC at least 30 days prior to establishing or acquiring a subsidiary or prior to commencement of a new activity through a State savings association-controlled subsidiary pursuant to section 18(m) and § 362.15, as described in the NPR.[41]

D. Section 390.254—How may a subsidiary of a State savings association issue securities?

State savings association subsidiaries are permitted to issue securities pursuant to section 28 of the FDI Act because the operating subsidiaries and service corporations of Federal savings associations are permitted to issue securities, subject to regulatory limitations. State savings associations and their subsidiaries are reminded that subsidiary issuances, like other permissible activities, are subject to the same restrictions or conditions imposed on the Federal savings association and must be conducted in the same manner in which an operating subsidiary or service corporation is authorized to issue such securities.[42]

Accordingly, a State savings association subsidiary should not state or imply that the securities it issues are covered by Federal deposit insurance, or issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that

[33] 12 CFR 5.59(d); 12 CFR part 225; 12 CFR 362.2(e).

[34] 12 U.S.C. 1831n(a)(2); 12 U.S.C. 1463(b)(2).

[35] Instructions for Preparation of Consolidated Reports of Condition and Income, Form FFIEC 031 and 041 *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201906_i.pdf.*

[36] 12 CFR 362.4(c). *See* FIL–97–97. September 23, 1997.

[37] 12 CFR 362.13.

[38] Section 362.4(c)(2)(vii) corresponds to § 390.252(a)(4) and (5).

[39] Public Law 111–203, 124 Stat 1376 (2010).

[40] 12 U.S.C. 1828(m).

[41] 85 FR 67684, 67687 (Oct. 26, 2020).

[42] 85 FR 67684, 67688 (Oct. 26, 2020).

the controlling State savings association is insolvent or has been placed into receivership, and for as long as any securities are outstanding, the controlling State savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the FDIC.[43]

E. Section 390.255—How may a State savings association exercise its salvage power in connection with a service corporation or lower-tier entities?

In the NPR, staff proposed that State savings associations apply to the FDIC for prior approval pursuant to § 362.11 before making a contribution or a loan to a lower-tier entity (salvage investment) that exceeds the maximum amount otherwise permitted under law or regulation to exercise its power to salvage the underlying asset to be consistent with State law. The applicant would be required to provide evidence that the State approved any exception over the loans to one borrower (LTOB) limit.[44]

As discussed in the NPR, these FDIC statutory and regulatory provisions provide a substantially similar process for an insured State savings association, or its subsidiary, to apply for prior consent from the FDIC to engage in certain activities, that are not otherwise prohibited by Federal or State law, while reaching substantially the same result as provided in subpart O without the burden of referring to a duplicative set of regulations.[45] The NPR concluded the application of these FDIC statutory and regulatory provisions provide substantially similar results for the FDIC to achieve substantially similar supervisory results for State savings associations and subsidiaries as would be obtained through subpart O.[46]

IV. Comments

The FDIC issued the NPR with a 30-day comment period, which closed on November 25, 2020.[47] The FDIC received no comments on the NPR. Consequently, the proposed rule is adopted as final without change, and part 390, subpart O, will be rescinded in its entirety.

V. The Final Rule

The final rule rescinds and removes subpart O and amends § 362.15 to remove references to Federal savings associations made unnecessary because of the amendment of Section 18(m) of the FDI Act, as amended by section 363(7) of the Dodd-Frank Act which no longer requires Federal savings associations to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to commencement of a new activity in a subsidiary controlled by a Federal savings association.[48]

As discussed in the NPR, the FDIC statutory and regulatory provisions applicable to State savings associations and their subsidiaries provide a substantially similar process for an insured State savings association, or its subsidiary, to apply for prior consent from the FDIC to engage in certain activities, that are not otherwise prohibited by Federal or State law, while reaching substantially the same result as provided in subpart O without the burden of referring to a duplicative set of regulations.[49] Under the final rule, the application of part 362, which implements section 28 and section 18(m) of the FDI Act, provides State savings associations with substantially similar procedures for notices and applications related to State savings association subsidiaries and investments. Further, section 37 of the FDI Act and section 4(b) of HOLA already require that State savings association reports and financial statements are uniform and consistent with U.S. generally accepted accounting principles (GAAP).[50] By applying these FDIC statutory and regulatory provisions to State savings associations and subsidiaries, the FDIC will achieve substantially similar supervisory results for State savings associations and subsidiaries under the final rule as would be obtained through subpart O.[51]

VI. Expected Effects

As of June 30, 2020, the FDIC supervised 3,270 depository institutions, of which 35 (1.1 percent) are State savings associations.[52] The final rule would affect regulations that govern State savings associations. As explained in the NPR, the final rule would remove §§ 390.250, 390.251, 390.252, 390.253, 390.254, and 390.255 of part 390, subpart O, because most of its provisions are duplicative of, or substantially similar to the requirements of section 28 of the FDI Act and its implementing regulations, 12 CFR part 362 of the FDIC's Rules and Regulations; and section 37 of the FDI Act. Additionally, the final rule amends § 362.15 to remove the references to Federal savings association notice requirements because Federal savings associations are no longer required to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to commencement of a new activity in a subsidiary controlled by a Federal savings association.[53] The FDIC does not believe that the final rule will have substantive effects on State savings associations. By removing duplicative or unnecessary regulations the FDIC believes that the final rule will benefit State savings associations by clarifying regulations and improving the ease of references.

VII. Alternatives

The FDIC considered alternatives to the final rule but believes that the amendments represent the most appropriate option for covered institutions. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS, but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to certain subordinate organizations of State savings associations. The FDIC considered the alternative of retaining the current regulations, but did not choose to do so because it would be needlessly complex and confusing for its supervised institutions to continue to have substantively similar regulations regarding subordinate organizations of State savings associations located in different locations within the CFR. The FDIC believes it would be unnecessarily burdensome for FDIC-supervised institutions to refer to these separate sets of regulations, and, therefore, is rescinding and removing subpart O and

[43] *Id.*

[44] LTOB limits are established by state law of each chartering authority, and LTOB Limits are not consistent from state to state. Some states allow waivers or modifications, while others do not. Part 362 does not authorize any insured State savings association to make investments or conduct activities that are not authorized or that are prohibited by either Federal or State law. 12 CFR 362.9(c).

[45] 85 FR 67684, 67686 (Oct. 26, 2020).

[46] *Id.*

[47] 85 FR 67684 (Oct. 26, 2020).

[48] Public Law 111–203, 124 Stat. 1376 (2010); 12 U.S.C. 1828(m).

[49] Section 28 (12 U.S.C. 1831e(a)), section 18(m) (12 U.S.C. 1828(m)), and section 37 (12 U.S.C. 1831n(a)) of the FDI Act, and section 4(b) of the Home Owners Loan Act (12 U.S.C. 1463(b)), govern the activities of State savings associations and subsidiaries.

[50] 12 U.S.C. 1831n(a)(2); 12 U.S.C. 1463(b)(2).

[51] 85 FR 67684 (Oct. 26, 2020).

[52] Call Report data, September 30, 2020.

[53] 12 U.S.C. 1828(m).

making a technical amendment to § 362.15 to remove references to Federal savings associations to streamline the FDIC's regulations.

VIII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (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 final rule rescinds and removes from part 390, subpart O, and makes a technical amendment to § 362.15 to remove references to Federal savings associations to streamline the FDIC's regulations. The final rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a final rule, an agency prepare a final regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[54] 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.[55] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the rule will not have a significant economic impact on a substantial number of small banking organizations.

As of June 30, 2020, the FDIC supervised 3,270 insured depository institutions, of which 2,548 are considered small banking organizations for the purposes of RFA. The rule primarily affects regulations that govern State savings associations.[56] There are 33 State savings associations considered to be small banking organizations for the purposes of the RFA.[57]

As previously discussed, the rule rescinds part 390, subpart O, because most of its elements are duplicative of, or substantially similar to the requirements of section 28 of the FDI Act and its implementing regulations, 12 CFR part 362 of the FDIC's Rules and Regulations; and section 37 of the FDI Act.

Additionally, the rule would amend certain sections of part 362 to remove the references to Federal savings association notice requirements because Federal savings associations are no longer required to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to commencement of a new activity in a subsidiary controlled by a Federal savings association.[58] The FDIC does not believe that the rule will have substantive effects on small State savings associations.

Section 390.250 sets forth the FDIC's general rulemaking and supervisory authority under the FDI Act, its specific authority under section 18(m) of the FDI Act[59] and subpart O's application to subordinate organizations of State savings associations. As previously discussed, State savings associations are subject to part 362, subparts C and D, which has the same statutory basis as § 390.350. Therefore, the FDIC believes that the practical application of part 362, subparts C and D, generally achieves the same outcomes for State savings associations as does subpart O. Therefore, the FDIC believes that the rescission of § 390.250 is unlikely to have any substantive effects for small State savings associations or their subordinate organizations.

Section 390.251 is a definition section related to subordinate organizations. As previously discussed, the FDIC believes that the definitions of *subsidiary* and *GAAP-consolidated subsidiary* are substantially similar to and redundant to other statutory and regulatory requirements to which State savings associations are already subject. As previously discussed, State savings associations are already subject to a definition of *control* in § 362.2(e), a definition that is narrower, however, than the one in § 390.251. Therefore, the rescission of § 390.251 could benefit State savings associations by narrowing the scope of investments in subordinate organizations that may be subject to limitation for supervisory, legal, or safety and soundness reasons asserted by the FDIC. The rescission of the definition of *control* in § 390.251 could further benefit State savings associations by creating parity with the control definition applicable to service companies of Federal savings associations which references the FRB's 12 CFR part 225, Regulation Y.[60] As previously discussed, State savings associations are already subject to a definition of *equity investment* in § 362.2(g), a definition that is broader, however, than the one in § 390.251. Therefore, the rescission of § 390.251 is unlikely to pose additional costs for State savings associations because they are already subject to regulations with a substantively similar and broader defined scope of investments in subordinate organizations. Finally, the rescission of § 390.251 would remove definitions of *lower-tier entity* and *second-tier service corporations* or *service corporation subsidiaries* for which there is no corollary in FDIC regulations. However, as previously discussed, the FDIC does not believe that the existence of these defined terms enhance the quality of State savings association supervision. Therefore, the FDIC believes that the rescission of these definitions is unlikely to have any substantive effects on small State savings associations.

Section 390.252 requires State savings associations and their subordinate organizations to operate in a manner that demonstrates to the public that they are separate corporate entities because of concerns that a failure to maintain separate corporate existences could potentially result in a court, for equitable reasons, holding the savings association liable for the obligations of the subordinate organization.[61] As discussed previously, FDIC-supervised depository institutions, including State savings associations and their subsidiaries, are covered by §§ 362.4(c) and 362.13, which are substantively similar to or broader than the

[54] 5 U.S.C. 601, *et seq.*

[55] The SBA defines a "small banking organization" as one having $600 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended, by 84 FR 34261, effective August 19, 2019). "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.

[56] FDIC Call Report, June 30, 2020.

[57] *Id.*

[58] 12 U.S.C. 1828(m).

[59] 12 U.S.C. 1828(m).

[60] 12 CFR 5.59(d); 12 CFR part 225.

[61] 61 FR 66561, 66567 (Dec. 18, 1996).

obligations in § 390.252. Therefore, the FDIC believes that the rescission of § 390.252 is unlikely to have any substantive effect on small State savings associations or their subsidiaries.

Section 390.253 establishes notification requirements for State savings associations prior to their establishing, acquiring or engaging in new activities of a subsidiary as required under section 18(m) of the FDI Act.[62] As discussed previously, State savings associations are already subject to substantively similar requirements in § 362.15. Therefore, the FDIC believes that the rescission of § 390.253 is unlikely to pose any substantive effects on small State savings associations.

Section 362.15 established notification requirements for State and Federal savings associations prior to their establishing or acquiring a subsidiary, or conducting any new activity through a subsidiary. As discussed previously, after the Dodd Frank Act amendment of section 18(m) of the FDI Act, Federal savings associations are no longer required to provide notice to the FDIC prior to the establishment, or acquisition, of a subsidiary, or prior to the commencement of a new activity in a subsidiary controlled by a Federal savings association.[63] Therefore, the FDIC believes that the rescission of references to Federal savings associations from § 362.15 is unlikely to have any substantive effect on small insured depository institutions in that it is simply consistent with existing law.

Section 390.254 permits a State savings association subsidiary to issue, either directly or through a third party intermediary, any securities that its parent State savings association is permitted to issue. As discussed previously, although there is no corollary regulation for FDIC-supervised depository institutions, State savings association subsidiaries are permitted to issue securities pursuant to section 28 of the FDI Act because the operating subsidiaries and service corporations of Federal savings associations are permitted to issue securities, subject to regulatory limitations. Therefore, the FDIC believes that the rescission of § 390.254, if adopted, is unlikely to have any substantive effect on small State savings associations or their subsidiaries.

Section 390.255 generally permits a State savings association to notify the FDIC at least 30 days before making a contribution or a loan (including a guarantee of a loan made by any other person) to a lower-tier entity (salvage investment) that exceeds the maximum amount otherwise permitted under law or regulation to exercise its power to salvage the underlying asset (typically, an outstanding loan).[64] As discussed previously, State savings associations are currently subject to § 362.11 which requires State savings associations to seek prior approval from the FDIC before making a contribution or a loan to a lower-tier entity (salvage investment) that exceeds the maximum amount otherwise permitted under law or regulation to exercise its power to salvage the underlying asset to be consistent with State law. Therefore, the FDIC believes that the rescission of § 390.255 is unlikely to substantively affect small State savings associations.

By removing duplicative or unnecessary regulations, the FDIC believes that the rule will benefit small State savings associations by clarifying regulations and improving the ease of references.

C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule. 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.

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.

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[65] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, 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.

E. 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.[66] 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 burdens, and further measures that will be taken to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as subpart O, this final rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to

[62] 12 CFR 390.253. See 12 U.S.C. 1828(m)(1).

[63] 12 U.S.C. 1828(m).

[64] Without the salvage power provision, the maximum amount a State savings association would be permitted would be related the LTOB limit, which is equivalent to the applicable state's legal lending limit.

[65] Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

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

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.

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply.

List of Subjects

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Investments, Reporting and recordkeeping requirements.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR parts 362 and 390 as follows:

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

■ 1. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a)(Tenth), 1828(j), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l).

■ 2. Revise § 362.15 to read as follows:

§ 362.15 Acquiring or establishing a subsidiary; conducting new activities through a subsidiary.

No state insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, unless it files a notice in compliance with § 303.142(c) of this chapter at least 30 days prior to establishment of the subsidiary or commencement of the activity and the FDIC does not object to the notice. This section does not apply to any state savings association that acquired its principal assets from a Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under state law.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

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

Authority: 12 U.S.C. 1819.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart O—[Removed and Reserved]

■ 4. Remove and reserve subpart O, consisting of §§ 390.250 through 390.255.

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. 2020–28454 Filed 2–2–21; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 390

RIN 3064–AF38

Removal of Transferred OTS Regulations Regarding Prompt Corrective Action Directives and Conforming Amendments to Other Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove from the Code of Federal Regulations rules entitled ''Prompt Corrective Action'' that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and amend certain sections of existing FDIC regulations governing the issuance and review of orders pursuant to the prompt corrective action provisions of the Federal Deposit Insurance Act to make it clear that such rules apply to all insured depository institutions for which the FDIC is the appropriate Federal banking agency.

DATES: The final rule is effective on March 5, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Watkins, Review Examiner, *RoWatkins@FDIC.gov,* Division of Risk Management Supervision, (202) 898–3865; Seth Rosebrock, Assistant General Counsel, Legal Division, (202) 898–6609, *srosebrock@FDIC.gov;* or Kristine Schmidt, Counsel, Legal Division, (202) 898–6686, *krschmidt@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Policy Objective

The policy objective of the rule is to remove unnecessary and duplicative regulations in order to simplify them and improve the public's understanding of them. Part 390, subpart Y, outlines administrative procedures related to prompt corrective action that are equivalent to procedures outlined in part 308, subpart Q, of the FDIC's existing regulations. Thus, the FDIC is rescinding the regulations in part 390, subpart Y, and reserving the subpart for future use. In addition, the FDIC is amending certain sections of part 308, subpart Q, of the FDIC's existing regulations on the issuance and review of orders pursuant to the prompt corrective action provisions of the Federal Deposit Insurance Act to make it clear that part 308, subpart Q, applies to all insured depository institutions for which the FDIC is the appropriate Federal banking agency.

II. Background

Part 390, subpart Y, was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of applicable provisions of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1]

A. The Dodd-Frank Act

As of July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS.

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5301 *et seq.*).

[2] Codified at 12 U.S.C. 5411.

[3] Codified at 12 U.S.C. 5414(b).

The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,[4] on June 14, 2011, the FDIC's Board of Directors (Board) approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[5]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[6] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act)[7] and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c)(1) of the Dodd-Frank Act[8] revised the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act,[9] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the appropriate Federal banking agency (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and insured State-licensed branches of foreign banks.

As noted above, on June 14, 2011, operating pursuant to this authority, the Board issued a list of regulations of the former OTS that the FDIC would enforce with respect to State savings associations. On that same date, the Board reissued and redesignated certain regulations transferred from the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[10] When the FDIC republished the transferred OTS regulations as new FDIC regulations, it specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC regulations, amending them, or rescinding them, as appropriate.[11]

B. Transferred OTS Regulations (Transferred to the FDIC's Part 390, Subpart Y)

A subset of the regulations transferred to the FDIC from the OTS concerns prompt corrective action provisions applicable to State savings associations. The OTS regulations, formerly found at 12 CFR part 565, §§ 565.7, 565.8, 565.9 and 565.10, were transferred to the FDIC with only nomenclature changes and now comprise part 390, subpart Y. Each provision of part 390, subpart Y, is discussed in Part III of this **SUPPLEMENTARY INFORMATION** section, below. The FDIC has conducted a careful review and comparison of part 390, subpart Y. As discussed in Part III of this **SUPPLEMENTARY INFORMATION** section, the FDIC is rescinding part 390, subpart Y, because the FDIC considers the provisions related to State savings associations contained in part 390, subpart Y, substantially similar to similar regulations related to state non-member banks. The FDIC will combine the regulations to make clear the same procedures apply to all FDIC-supervised institutions.

III. Proposed Rule

On September 28, 2020, the FDIC published a notice of proposed rulemaking (NPR) regarding the removal of part 390, subpart Y (formerly OTS 12 CFR part 565, §§ 565.7, 565.8, 565.9 and 565.10), which addressed prompt corrective action provisions applicable to State savings associations.[12] The NPR proposed removing part 390, subpart Y, from the Code of Federal Regulations, because, after careful review, the FDIC concluded that the retention of part 390, subpart Y, is unnecessary and that rescission of subpart Y in its entirety would streamline the FDIC rules and regulations. The regulations related to State savings associations will be incorporated into part 308, subpart Q as described below. Part 390, subpart Y, also references savings and loan holding companies. When the regulation was transferred from the OTS, the references to ''any company that controls the State savings association'' were not deleted with the other technical amendments. The FDIC is not the appropriate successor agency for supervision of savings and loan holding companies. Under the Dodd-Frank Act, supervision of savings and loan holding companies was transferred to the Federal Reserve Board.[13] The provisions in the FDIC regulations relating to ''any company that controls the State savings association'' will therefore be set aside and not incorporated into the existing FDIC regulations at part 308, subpart Q, addressing FDIC-supervised institutions.

Consistent with its legal authority to issue and modify regulations as the appropriate Federal banking agency under section 3(q) of the Federal Deposit Insurance Act, the FDIC also proposed to amend and revise provisions of part 308, subpart Q, to clarify and state explicitly the regulations apply to all FDIC-supervised institutions.

A. Comparison of Other Applicable Statutes and Regulations With the Transferred OTS Regulations To Be Rescinded

12 CFR 390.456—Directives To Take Prompt Corrective Action

Section 390.456 describes the administrative procedures for the FDIC to issue a directive to take prompt corrective action against a State savings association. These administrative procedures were initially found at 12 CFR 565.7 and are equivalent to the administrative procedures relating to FDIC-supervised banks found at 12 CFR 308.201.

The FDIC proposed that § 390.456 be rescinded in its entirety. The amendments to subpart Q will clarify in a single location that the regulations apply to all FDIC-supervised institutions. Therefore, it is not necessary to have a regulation specifically applicable to State savings associations.

12 CFR 390.457—Procedures for Reclassifying a State Savings Association Based on Criteria Other Than Capital

Section 390.457 describes the administrative procedures to reclassify a State savings association based on criteria other than capital. This section describes how the FDIC may consider other unsafe or unsound practices to lower a State saving association's capital category under part 324. The section also details the procedures for notifying the State saving association and contesting the determination. These administrative procedures were initially found at 12 CFR 565.8 and were recently modified to account for

[4] Codified at 12 U.S.C. 5414(c).

[5] 76 FR 39246 (July 6, 2011).

[6] Codified at 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1811 *et seq.*

[8] Codified at 12 U.S.C. 5412(c)(1).

[9] 12 U.S.C. 1813(q).

[10] 76 FR 47652 (Aug. 5, 2011).

[11] *See* 76 FR 47653.

[12] 85 FR 60738 (Sept. 28, 2020).

[13] 12 U.S.C. 5412(b)(1).

changes made to part 324.[14] Section 390.457 is equivalent to the administrative procedures relating to FDIC-supervised banks found at 12 CFR 308.202.

The FDIC proposed that § 390.457 be rescinded in its entirety. The amendments to subpart Q will clarify in a single location that the regulations apply to all FDIC-supervised institutions. Therefore, it is not necessary to have a regulation specifically applicable to State savings associations.

12 CFR 390.458—Order To Dismiss a Director or Senior Executive Officer

Section 390.458 describes the additional administrative procedures related to prompt corrective action directives that require the State savings association to terminate the employment of a director or officer. This section also includes provisions to challenge this type of prompt corrective order directive. These administrative procedures were initially found at 12 CFR 565.9. Section 390.458 is equivalent to the administrative procedures relating to FDIC-supervised banks found at 12 CFR 308.203.

The FDIC proposed that § 390.458 be rescinded in its entirety. The amendments to subpart Q will clarify in a single location that the regulations apply to all FDIC-supervised institutions. Therefore, it is not necessary to have a regulation specifically applicable to State savings associations

12 CFR 390.459—Enforcement of Directives

Section 390.459 describes the additional remedies the FDIC may take to seek compliance with prompt corrective action directives. These procedures were initially found at 12 CFR 565.10. Section 390.459 is equivalent to the administrative procedures relating to FDIC-supervised banks found at 12 CFR 308.204.

The FDIC proposed that § 390.459 be rescinded in its entirety. The amendments to subpart Q will clarify in a single location that the regulations apply to all FDIC-supervised institutions. Therefore, it is not necessary to have a regulation specifically applicable to State savings associations.

B. Changes to FDIC Regulations

As discussed in part III of this **SUPPLEMENTARY INFORMATION**, the FDIC's part 308, subpart Q, addresses the administrative procedures related to the issuance and enforcement of prompt corrective action directives. The Dodd-Frank Act added State savings associations to the list of entities for which the FDIC is designated as the appropriate Federal banking agency.[15] To clarify that part 308, subpart Q, applies to all institutions for which the FDIC is the appropriate Federal banking agency, the FDIC proposed to amend §§ 308.200 through 308.204 to replace the phrases ''banks'' and ''insured branches of foreign banks'' throughout subpart Q with the phrase ''FDIC-supervised institution.'' Section 308.200 will be revised to add the definition of the term ''FDIC-supervised institution'' to mean any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act.[16]

Additionally, the FDIC proposed one additional change to conform the FDIC's regulations relating to prompt corrective action directives that apply to banks and the former OTS regulations relating to State savings associations. Sections 308.202 and 390.457 describe the procedures relating to classifying an institution due to something other than capital. These two regulations differ in one respect. The FDIC regulation at § 308.202(a)(6) provides that when a hearing is ordered, it will begin no later than 30 days from the date of the request unless the bank requests a later date. The former OTS version of this regulation, incorporated by the FDIC at § 390.457, provides that the hearing should be ordered within 30 days of request unless the FDIC allows further time at the request of the State savings association. While both of these provisions demonstrate that a hearing is likely to be delayed at the request of the institution, the former OTS version of the regulation is written with greater clarity that the FDIC will evaluate and may then provide consent to the request. The OTS version of the regulation makes it clear that there is no automatic extension granted to the institution. The greater clarity in this language makes it the preferred choice when reconciling the two regulations into one regulation that applies to all FDIC-supervised institutions. The changes to this aspect of the regulation will provide greater clarity to those institutions going forward.

IV. Comments

The FDIC issued the NPR with a 30-day comment period, which closed on October 28, 2020. The FDIC received no comments on its NPR, and consequently the FDIC is adopting the amendments as proposed.

V. Explanation of the Final Rule

As discussed in the NPR, the requirements for State savings associations in part 390, subpart Y, are largely unnecessary, redundant, or duplicative of existing FDIC regulations. To that effect, the Final Rule removes and rescinds 12 CFR part 390, subpart Y, and amends the FDIC's requirements of part 308, subpart Q to expressly apply to all FDIC-supervised insured depository institutions. These initiatives will serve to streamline the FDIC's regulations.

VI. Expected Effects

As explained in detail in Section III of this **SUPPLEMENTARY INFORMATION** section, certain OTS regulations transferred to the FDIC by the Dodd-Frank Act relating to prompt corrective action directives are either unnecessary or effectively duplicate existing FDIC regulations. This rule will eliminate those transferred OTS regulations. The rule will also clarify that the standards in part 308, subpart Q, apply to State savings associations because the FDIC is the ''appropriate Federal banking agency'' pursuant to the FDI Act. As of June 30, 2020, the FDIC supervised 3,270 depository institutions, of which 35 (1.1 percent) are State savings associations.[17] The rule primarily would affect regulations that govern State savings associations.

As explained previously, the rule would rescind 12 CFR part 390, subpart Y, which includes the following: § 390.456, which outlines administrative procedures for issuing a directive to take prompt corrective action against a State savings association; § 390.457, which outlines administrative procedures for reclassifying a State savings association based on criteria other than capital; § 390.458, which outlines administrative procedures related to prompt corrective action that require a State savings association to terminate the employment of a director or officer; and § 390.459, which outlines administrative procedures the FDIC may take to seek compliance with prompt corrective action directives. The FDIC has determined that these sections of 12 CFR part 390 are equivalent to regulations related to prompt corrective action in the FDIC's existing regulations. Therefore, the FDIC does not expect the removal of the regulations in subpart Y

[14] See 83 FR 17737.

[15] See section 312(c) of the Dodd-Frank Act, codified at 12 U.S.C. 1813(q).

[16] 12 U.S.C. 1813(q).

[17] Call Report data, June 30, 2020.

to significantly affect FDIC-supervised State savings associations.

The final rule would also amend the FDIC's regulations that establish administrative procedures for prompt corrective action in 12 CFR 308.200 through 308.204 to make them applicable to all FDIC-supervised institutions, including State savings associations. As discussed previously, these changes would not change the required procedures related to prompt corrective action that are applicable to State savings associations since the requirements in subpart Y are equivalent to requirements in the FDIC's existing regulations; therefore this aspect of the rule is unlikely to substantively affect FDIC-supervised State savings associations.

Finally, the rule revises 12 CFR 308.202 to clarify the procedures for delaying a hearing if an institution is reclassified based on criteria other than capital. The FDIC's regulation currently states that if a hearing is scheduled, it will be held within 30 days of the request unless the institution requests a later date. The regulations in § 390.457 state that a hearing will be held within 30 days of the request unless the FDIC allows further time at the request of the institution. The FDIC is adopting the language from § 390.457 in its own regulations since § 390.457 clarifies that requests for an extension will not be automatically granted. This aspect of the rule will pose no change for the 35 FDIC-supervised State savings associations. The FDIC believes that adopting the language from § 390.457 should further clarify for State nonmember institutions that requests for an extension will not automatically be granted, however, this change is unlikely to pose any substantive effects on State nonmember institutions.

Since the prompt corrective action directive provisions in part 390, subpart Y, are substantively similar to existing regulations for state nonmember banks found in part 308, subpart Q, the FDIC does not believe that rescission of §§ 390.456 through 390.459 would have any substantive effects on FDIC-supervised State savings associations.

VII. Alternatives

The FDIC believes that the amendments represent the most appropriate option for covered institutions and, at this time, has not identified significant alternatives to the rule in its current form. As discussed previously, the Dodd-Frank Act transferred certain powers, duties, and functions formerly performed by the OTS to the FDIC. The FDIC's Board reissued and redesignated certain transferred regulations from the OTS but noted that it would evaluate them and might later incorporate them into other FDIC regulations, amend them, or rescind them, as appropriate. The FDIC has evaluated the existing regulations relating to prompt corrective actions, including part 308, subpart Q, and part 390, subpart Y. The FDIC has available the status quo alternative of retaining the current regulations but is not choosing to do so because it would be needlessly duplicative for substantively similar regulations regarding prompt corrective action directives for banks and State savings associations to be located in different locations within the Code of Federal Regulations. The FDIC believes it would be redundant and potentially confusing for FDIC-supervised institutions to continue to refer to these separate sets of regulations and is therefore amending and streamlining them in accordance with this final rulemaking.

VIII. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[18] 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 final rule rescinds and removes from FDIC regulations part 390, subpart Y. With regard to part 308, subpart Q, the final rule amends §§ 308.200 through 308.204 to clarify that State savings associations, as well as State nonmember banks and foreign banks having insured branches are all subject to part 308, subpart Q. The final rule will not create any new or revise any existing collections of information under the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.[19] 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.[20] 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 rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2020, the FDIC supervised 3,270 depository institutions,[21] of which 2,492 were considered small entities for the purposes of RFA.[22] There are 33 State savings associations that are small entities for the purposes of RFA, or 1.3 percent of all depository institutions considered small entities.[23] As discussed previously, the rule rescinds 12 CFR part 390, subpart Y, which includes the following: § 390.456, which outlines administrative procedures for issuing a directive to take prompt corrective action against a State savings association; § 390.457, which outlines administrative procedures for reclassifying a State savings association based on criteria other than capital; § 390.458, which outlines administrative procedures related to prompt corrective action that require a State savings association to terminate the employment of a director or officer; and § 390.459, which outlines administrative procedures the FDIC may take to seek compliance with prompt corrective action directives. The FDIC has determined that these sections of 12 CFR part 390 are equivalent to regulations related to prompt corrective

[18] 44 U.S.C. 3501–3521.

[19] 5 U.S.C. 601, *et seq.*

[20] 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.

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

[22] FDIC Call Report data, June 30, 2020.

[23] Id.

action in the FDIC's existing regulations. Therefore, the FDIC does not expect the removal of the regulations in subpart Y to significantly affect small FDIC-supervised State savings associations.

The final rule also amends the FDIC's regulations that establish administrative procedures for prompt corrective action in 12 CFR 308.200 through 308.204 to make them applicable to all FDIC-supervised institutions, including State savings associations. As discussed previously, these changes would not change the required procedures related to prompt corrective action that are applicable to small State savings associations since the requirements in subpart Y are equivalent to requirements in the FDIC's existing regulations.

Finally, the rule revises 12 CFR 308.202 to clarify the procedures for delaying a hearing if an institution is reclassified based on criteria other than capital. The FDIC's regulation currently states that if a hearing is scheduled, it will be held within 30 days of the request unless the institution requests a later date. The regulations in § 390.457 state that a hearing will be held within 30 days of the request unless the FDIC allows further time at the request of the institution. The FDIC is adopting the language from § 390.457 in its own regulations since § 390.457 clarifies that requests for an extension will not be automatically granted. This aspect of the rule will pose no change for the 33 small FDIC-supervised State savings associations. The FDIC believes that adopting the language from § 390.457 should further clarify for small State nonmember institutions that requests for an extension will not automatically be granted; however, this change is unlikely to pose any substantive effects on small State nonmember institutions.

Since the prompt corrective action directive provisions in part 390, subpart Y, are substantively similar to existing regulations for state nonmember banks found in part 308, subpart Q, the FDIC believes it is unlikely that that rescission of §§ 390.456 through 390.459 would have any substantive effects on small FDIC-supervised State savings associations.

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

C. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major rule.'' [24] 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.[25]

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

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [27] 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.

E. 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.[28] 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 burdens, and further measures the FDIC will take to address issues that were identified.[29] As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as part 390, subpart Y, this rule complements other actions that the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

F. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[30] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[31] The FDIC has determined that the final rule would not impose any additional reporting, disclosure, or other new requirements on IDIs, and thus the requirements of the RCDRIA do not apply.

List of Subjects

12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends parts 308 and 390

[24] Codified at 5 U.S.C. 801 *et seq.*

[25] Codified at 5 U.S.C. 801(a)(3).

[26] Codified at 5 U.S.C. 804(2).

[27] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

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

[29] 82 FR 15900 (March 31, 2017).

[30] 12 U.S.C. 4802(a).

[31] *Id.*

of title 12 of the Code of Federal Regulations as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831*o*, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78*o*(c)(4), 78*o*–4(c), 78*o*–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

■ 2. Revise subpart Q to read as follows:

Subpart Q—Issuance and Review of Orders Pursuant to the Prompt Corrective Action Provisions of the Federal Deposit Insurance Act

§ 308.200 Scope.

The rules and procedures set forth in this subpart apply to FDIC-supervised institutions and senior executive officers and directors of the same that are subject to the provisions of section 38 of the Federal Deposit Insurance Act (section 38) (12 U.S.C. 1831o) and subpart H of part 324 of this chapter. For purposes of this subpart, the term ''FDIC-supervised institution'' means any insured depository institution for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

§ 308.201 Directives to take prompt corrective action.

(a) *Notice of intent to issue directive*—(1) *In general.* The FDIC shall provide an undercapitalized, significantly undercapitalized, or critically undercapitalized FDIC-supervised institution prior written notice of the FDIC's intention to issue a directive requiring such FDIC-supervised institution to take actions or to follow proscriptions described in section 38 that are within the FDIC's discretion to require or impose under section 38 of the FDI Act, including section 38 (e)(5), (f)(2), (f)(3), or (f)(5). The FDIC-supervised institution shall have such time to respond to a proposed directive as provided by the FDIC under paragraph (c) of this section.

(2) *Immediate issuance of final directive.* If the FDIC finds it necessary in order to carry out the purposes of section 38 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue a directive requiring an FDIC-supervised institution immediately to take actions or to follow proscriptions described in section 38 that are within the FDIC's discretion to require or impose under section 38 of the FDI Act, including section 38 (e)(5), (f)(2), (f)(3), or (f)(5). An FDIC-supervised institution that is subject to such an immediately effective directive may submit a written appeal of the directive to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the issuance of the directive, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the directive shall remain in effect unless the FDIC, in its sole discretion, stays the effectiveness of the directive.

(b) *Contents of notice.* A notice of intention to issue a directive shall include:

(1) A statement of the FDIC-supervised institution's capital measures and capital levels;

(2) A description of the restrictions, prohibitions, or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of such affirmative actions; and

(4) The date by which the FDIC-supervised institution subject to the directive may file with the FDIC a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* An FDIC-supervised institution may file a written response to a notice of intent to issue a directive within the time period set by the FDIC. The date shall be at least 14 calendar days from the date of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the FDIC-supervised institution or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 38;

(ii) Any recommended modification of the proposed directive; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the FDIC-supervised institution regarding the proposed directive.

(d) *FDIC consideration of response.* After considering the response, the FDIC may:

(1) Issue the directive as proposed or in modified form;

(2) Determine not to issue the directive and so notify the FDIC-supervised institution; or

(3) Seek additional information or clarification of the response from the FDIC-supervised institution or any other relevant source.

(e) *Failure to file response.* Failure by an FDIC-supervised institution to file with the FDIC, within the specified time period, a written response to a proposed directive shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the directive.

(f) *Request for modification or rescission of directive.* Any FDIC-supervised institution that is subject to a directive under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the directive and may propose that the directive be rescinded or modified. Unless otherwise ordered by the FDIC, the directive shall continue in place while such request is pending before the FDIC.

§ 308.202 Procedures for reclassifying an FDIC-supervised institution based on criteria other than capital.

(a) *Reclassification based on unsafe or unsound condition or practice*—(1) *Issuance of notice of proposed reclassification*—(i) *Grounds for reclassification.* (A) Pursuant to § 324.403(d) of this chapter, the FDIC may reclassify a well-capitalized FDIC-supervised institution as adequately capitalized or subject an adequately capitalized or undercapitalized institution to the supervisory actions applicable to the next lower capital category if:

(*1*) The FDIC determines that the FDIC-supervised institution is in unsafe or unsound condition; or

(*2*) The FDIC, pursuant to section 8(b)(8) of the FDI Act (12 U.S.C. 1818(b)(8)), deems the FDIC-supervised institution to be engaged in an unsafe or unsound practice and not to have corrected the deficiency.

(B) Any action pursuant to this paragraph (a)(1)(i) shall be referred to in this section as *reclassification.*

(ii) *Prior notice to institution.* Prior to taking action pursuant to § 324.403(d) of this chapter, the FDIC shall issue and serve on the FDIC-supervised institution a written notice of the FDIC's intention to reclassify it.

(2) *Contents of notice.* A notice of intention to reclassify an FDIC-supervised institution based on unsafe or unsound condition shall include:

(i) A statement of the FDIC-supervised institution's capital measures and capital levels and the category to which the FDIC-supervised institution would be reclassified;

(ii) The reasons for reclassification of the FDIC-supervised institution; and

(iii) The date by which the FDIC-supervised institution subject to the notice of reclassification may file with the FDIC a written appeal of the proposed reclassification and a request for a hearing, which shall be at least 14 calendar days from the date of service of the notice unless the FDIC determines that a shorter period is appropriate in light of the financial condition of the FDIC-supervised institution or other relevant circumstances.

(3) *Response to notice of proposed reclassification.* An FDIC-supervised institution may file a written response to a notice of proposed reclassification within the time period set by the FDIC. The response should include:

(i) An explanation of why the FDIC-supervised institution is not in an unsafe or unsound condition or otherwise should not be reclassified; and

(ii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the FDIC-supervised institution regarding the reclassification.

(4) *Failure to file response.* Failure by an FDIC-supervised institution to file, within the specified time period, a written response with the FDIC to a notice of proposed reclassification shall constitute a waiver of the opportunity to respond and shall constitute consent to the reclassification.

(5) *Request for hearing and presentation of oral testimony or witnesses.* The response may include a request for an informal hearing before the FDIC under this section. If the FDIC-supervised institution desires to present oral testimony or witnesses at the hearing, the FDIC-supervised institution shall include a request to do so with the request for an informal hearing. A request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right to present oral testimony or witnesses.

(6) *Order for informal hearing.* Upon receipt of a timely written request that includes a request for a hearing, the FDIC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the FDIC allows further time at the request of the FDIC-supervised institution. The hearing shall be held in Washington, DC, or at such other place as may be designated by the FDIC before a presiding officer(s) designated by the FDIC to conduct the hearing.

(7) *Hearing procedures.* (i) The FDIC-supervised institution shall have the right to introduce relevant written materials and to present oral argument at the hearing. The FDIC-supervised institution may introduce oral testimony and present witnesses only if expressly authorized by the FDIC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in this part apply to an informal hearing under this section unless the FDIC orders that such procedures shall apply.

(ii) The informal hearing shall be recorded, and a transcript shall be furnished to the FDIC-supervised institution upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(iii) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(8) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the FDIC on the reclassification.

(9) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the FDIC will decide whether to reclassify the FDIC-supervised institution and notify the FDIC-supervised institution of the FDIC's decision.

(b) *Request for rescission of reclassification.* Any FDIC-supervised institution that has been reclassified under this section, may, upon a change in circumstances, request in writing that the FDIC reconsider the reclassification and may propose that the reclassification be rescinded and that any directives issued in connection with the reclassification be modified, rescinded, or removed. Unless otherwise ordered by the FDIC, the FDIC-supervised institution shall remain subject to the reclassification and to any directives issued in connection with that reclassification while such request is pending before the FDIC.

§ 308.203 Order to dismiss a director or senior executive officer.

(a) *Service of notice.* When the FDIC issues and serves a directive on an FDIC-supervised institution pursuant to § 308.201 requiring the FDIC-supervised institution to dismiss from office any director or senior executive officer under section 38(f)(2)(F)(ii) of the FDI Act, the FDIC shall also serve a copy of the directive, or the relevant portions of the directive where appropriate, upon the person to be dismissed.

(b) *Response to directive*—(1) *Request for reinstatement.* A director or senior executive officer who has been served with a directive under paragraph (a) of this section (Respondent) may file a written request for reinstatement. The request for reinstatement shall be filed within 10 calendar days of the receipt of the directive by the Respondent, unless further time is allowed by the FDIC at the request of the Respondent.

(2) *Contents of request; informal hearing.* The request for reinstatement shall include reasons why the Respondent should be reinstated and may include a request for an informal hearing before the FDIC under this section. If the Respondent desires to present oral testimony or witnesses at the hearing, the Respondent shall include a request to do so with the request for an informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony. Failure to request a hearing shall constitute a waiver of any right to a hearing, and failure to request the opportunity to present oral testimony or witnesses shall constitute a waiver of any right or opportunity to present oral testimony or witnesses.

(3) *Effective date.* Unless otherwise ordered by the FDIC, the dismissal shall remain in effect while a request for reinstatement is pending.

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring an FDIC-supervised institution to dismiss from office any director or senior executive officer, the FDIC shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the FDIC, before a presiding officer(s) designated by the FDIC to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the FDIC or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in this part apply to an informal hearing under this section unless the FDIC orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript shall be furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the FDIC-supervised institution would materially strengthen the FDIC-supervised institution's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the FDIC-supervised institution's capital level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the FDIC-supervised institution based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the FDIC concerning the Respondent's request for reinstatement with the FDIC-supervised institution.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the FDIC shall grant or deny the request for reinstatement and notify the Respondent of the FDIC's decision. If the FDIC denies the request for reinstatement, the FDIC shall set forth in the notification the reasons for the FDIC's action.

§ 308.204 Enforcement of directives.

(a) *Judicial remedies.* Whenever an FDIC-supervised institution fails to comply with a directive issued under section 38, the FDIC may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act (12 U.S.C. 1818(i)(1)).

(b) *Administrative remedies*—(1) *Failure to comply with directive.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any FDIC-supervised institution that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance.

(2) *Failure to implement capital restoration plan.* The failure of an FDIC-supervised institution to implement a capital restoration plan required under section 38, or subpart H of part 324 of this chapter, or the failure of a company having control of an FDIC-supervised institution to fulfill a guarantee of a capital restoration plan made pursuant to section 38(e)(2) of the FDI Act shall subject the FDIC-supervised institution to the assessment of civil money penalties pursuant to section 8(i)(2)(A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 38 or subpart H of part 324 of this chapter through any other judicial or administrative proceeding authorized by law.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

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

Authority: 12 U.S.C. 1819.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78l; 78m; 78n; 78p; 78w.

Subpart Y—[Removed and Reserved]

■ 4. Remove and reserve subpart Y, consisting of §§ 390.450 through 390.459.

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. 2020–28455 Filed 2–2–21; 8:45 am]

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