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Title 3—

The President

Proclamation 10320 of December 5, 2021

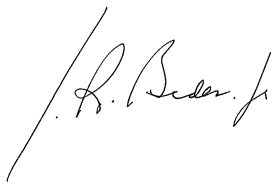
Death of Robert Joseph Dole

By the President of the United States of America

A Proclamation

As a mark of respect for Robert Joseph Dole, a statesman like few in our history and a war hero among the greatest of the Greatest Generation, I hereby order, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on December 9, 2021. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



[FR Doc. 2021–26810
Filed 12–8–21; 8:45 am]
Billing code 3395–F2–P

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2021–0045]

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security/Office of the Immigration Detention Ombudsman–001 Office of the Immigration Detention Ombudsman System of Records

AGENCY: Office of the Immigration Detention Ombudsman, U.S. Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a newly established system of records titled, ''DHS/Office of the Immigration Detention Ombudsman (OIDO)–001 Office of the Immigration Detention Ombudsman System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the ''DHS/Office of the Immigration Detention Ombudsman (OIDO)–001 Office of the Immigration Detention Ombudsman System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective December 9, 2021.

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Lynn Parker Dupree, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Homeland Security (DHS) Office of the Immigration Detention Ombudsman (OIDO) published a notice of proposed rulemaking in the **Federal Register**, 86 FR 49490 (September 3, 2021), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/OIDO–001 Office of the Immigration Detention Ombudsman System of Records. The DHS/OIDO–001 Office of the Immigration Detention Ombudsman System of Records notice was published concurrently in the **Federal Register**, 86 FR 49553 (September 3, 2021), and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

OIDO is an independent office within DHS tasked with reviewing and resolving individual complaints and providing independent oversight of immigration detention facilities, including conducting announced and unannounced inspections, reviewing contract terms for immigration detention facilities and services, and making recommendations and reporting to Congress on findings. OIDO is creating this system of records to collect and maintain records related to individual complaints from or about individuals in immigration detention regarding potential violations of law, individual rights, standards of professional conduct, contract terms, or policy related to immigration detention by any officer or employee of CBP or ICE, or any contracted, subcontracted, or cooperating entity personnel.

Consistent with DHS's information sharing mission, information stored in the DHS/OIDO–001 Office of the Immigration Detention Ombudsman System of Records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/OIDO may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

Public Comments

DHS received zero comments on the Notice of Proposed Rulemaking and zero comments on the System of Records Notice. As such, the Department will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. In appendix C to part 5, add paragraph 87 to read as follows''

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

87. The DHS/OIDO–001 Office of the Immigration Detention Ombudsman System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/OIDO–001 Office of the Immigration Detention Ombudsman System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws, and investigations, inquiries, and proceedings there under. The DHS/OIDO–001 Office of the Immigration Detention Ombudsman System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). Where a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), (k)(2), or (k)(5), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case

basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities. Further, permitting amendment to law enforcement records after an investigation has been completed would impose an unmanageable administrative burden. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Lynn Parker Dupree,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2021–26618 Filed 12–8–21; 8:45 am]

BILLING CODE 9112–AS–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2021–0161]

RIN 3150–AK69

List of Approved Spent Fuel Storage Casks: TN Americas LLC, TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, Renewal of Initial Certificate and Amendment No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the TN Americas LLC, TN–68 Dry Storage Cask listing within the ''List of approved spent fuel storage casks'' to renew, for an additional 40 years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027. The renewal of the initial certificate and Amendment No. 1 revises the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components (SSCs) of the dry storage system to ensure that the SSCs will maintain their intended functions during the period of extended storage operations.

DATES: This direct final rule is effective February 22, 2022, unless significant adverse comments are received by January 10, 2022. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2021–0161, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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: Christian Jacobs, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6825, email: *Christian.Jacobs@nrc.gov* and Solomon Sahle, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3781, email: *Solomon.Sahle@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0161 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–2021–0161. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individuals 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2021–0161 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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. Rulemaking Procedure

This rule is limited to the renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 and does not include other aspects of the TN Americas LLC, TN–68 Dry Storage Cask system design. The NRC is using the ''direct final rule procedure'' to issue this renewal because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. Adequate protection of public health and safety continues to be reasonably assured. The amendment to the rule will become effective on February 22, 2022. However, if the NRC receives any significant adverse comments on this direct final rule by January 10, 2022, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 28, 2000 (65 FR 24855), that approved the TN–68 Dry Storage Cask system design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1027. The NRC issued a direct final rule on August 16, 2007 (72 FR 45880), that approved Amendment No. 1 to Certificate of Compliance No. 1027 for the TN–68 Dry Storage Cask system design and added it to the list of NRC approved cask designs in § 72.214.

IV. Discussion of Changes

On April 9, 2020, TN Americas LLC submitted a request to the NRC to renew, for an additional 40 years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 for the TN–68 Dry Storage Cask system. TN Americas LLC supplemented its request on July 29, 2020; February 9, 2021; and March 24, 2021.

The renewal of the initial certificate and Amendment No. 1 was conducted in accordance with the renewal provisions in § 72.240. This section of the NRC spent fuel storage regulations authorizes the NRC to include any additional certificate conditions it deems necessary to ensure the safe operation of the cask during the certificate's renewal period. The NRC included three additional conditions to the renewal of the initial certificate of compliance and Amendment No. 1:

• The submittal of an updated final safety analysis report (UFSAR) to address aging management activities resulting from the renewal of the certificate of compliance. This condition ensures that the UFSAR changes are made in a timely fashion to enable general licensees using the storage system during the period of extended

operation to develop and implement necessary procedures.

- The requirement that general licensees initiating or using spent fuel dry storage operations with the TN–68 Dry Storage Cask system ensure that their evaluations are included in the reports required by § 72.212, ''Conditions of general license issued under § 72.210.'' These reports will include appropriate considerations for the period of extended operation, a review of the UFSAR changes resulting from the certificate of compliance renewal, and a review of the NRC safety evaluation report (SER) related to the certificate of compliance renewal.
- The requirement that future amendments and revisions to this certificate of compliance include evaluations of the impacts to aging management activities to ensure that they remain adequate for any changes to the structures, systems, and components (SSCs).

The NRC made one corresponding change to the technical specifications for the initial certificate of compliance and Amendment No. 1. The change added a new section, which ensures that general licensees using the storage system develop procedures to address aging management activities required in the period of extended operation.

As documented in the preliminary SER, the NRC performed a safety evaluation of the proposed certificate of compliance renewal request. The NRC determined that this renewal does not change the cask design or fabrication requirements in the proposed certificate of compliance renewal request. The NRC determined that the design of the cask would continue to maintain confinement, shielding, and criticality control in the event of each evaluated accident condition. In addition, any resulting occupational exposure or offsite dose rates from the renewal of the initial certificate of compliance and Amendment No. 1 would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection Against Radiation.'' Thus, the NRC found there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. In its SER for the renewal of the TN–68 Dry Storage Cask system, the NRC staff has determined that if the conditions specified in the certificate of compliance to implement these regulations are met, adequate protection of public health and safety will continue to be reasonably assured.

This direct final rule revises the TN–68 Dry Storage Cask listing in § 72.214 by renewing for 40 more years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027. The renewal consists of the changes previously described, as set forth in the renewed initial certificate and amendment and their revised technical specifications. The revised technical specifications are identified in the SER.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the TN Americas LLC, TN–68 Dry Storage Cask design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State's administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the TN–68 Dry Storage Cask listing within the ''List of approved spent fuel storage casks'' to renew, for an additional 40 years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027.

B. The Need for the Action

This direct final rule renews the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 for the TN Americas LLC, TN–68 Dry Storage Cask system design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites in casks with the approved modifications under a general license. Specifically, this rule extends the expiration date for the TN Americas LLC, TN–68 Dry Storage Cask certificate for an additional 40 years, allowing a reactor licensee to continue using it under general license provisions in an independent spent fuel storage installation to store spent fuel in dry casks in accordance with 10 CFR part 72.

C. Environmental Impacts of the Action

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended. As required by § 72.240, applications for renewal of a spent fuel

storage certificate of compliance design are required to demonstrate that SSCs important to safety will continue to perform their intended function for the requested renewal term. As discussed in the NRC's SER for the renewal of the initial certificate and Amendment No. 1, the NRC has approved conditions in the renewed initial certificate and Amendment No. 1 requiring the general licensee to implement the aging management activities described in the renewal application and incorporated into the UFSAR. These conditions ensure that the TN Americas LLC, TN–68 Dry Storage Cask system will continue to perform its intended safety functions and provide reasonable assurance of adequate protection of public health and safety throughout the renewal period.

Incremental impacts from continued use of the TN–68 Dry Storage Cask system under a general license for an additional 40 years are not considered significant. When the general licensee follows all procedures and administrative controls, including the conditions established because of this renewal, no effluents are expected from the sealed dry cask systems. Activities associated with cask loading and decontamination may result in some small incremental liquid and gaseous effluents, but these activities will be conducted under 10 CFR parts 50 and 52 reactor operating licenses, and effluents will be controlled within existing reactor site technical specifications. Because reactor sites are relatively large, any incremental offsite doses due to direct radiation exposure from the spent fuel storage casks are expected to be small, and when combined with the contribution from reactor operations, well within the annual dose equivalent of 0.25 mSv (25 mrem) limit to the whole body specified in § 72.104. Incremental impacts on collective occupational exposures due to dry cask spent fuel storage are expected to be only a small fraction of the exposures from operation of the nuclear power station.

The TN–68 Dry Storage Cask system is designed to mitigate the effects of design-basis accidents that could occur during storage. Design-basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design-basis earthquake, a design-basis flood, an accidental cask drop, lightning effects, fire, explosions, and other incidents.

During the promulgation of the amendments that added subpart K to 10 CFR part 72 (55 FR 29181; July 18, 1990), the NRC staff assessed the public health consequences of dry cask storage accidents and sabotage events. In the supporting analyses for these amendments, the NRC determined that a release from a dry cask storage system would be comparable in magnitude to a release from the same quantity of fuel in a spent fuel storage pool. As a result of these evaluations, the NRC determined that, because of the physical characteristics of the storage casks and conditions of storage that include specific security provisions, the potential risk to public health and safety due to accidents or sabotage is very small.

Considering the specific design requirements for each accident or sabotage condition, the design of the cask would maintain confinement, shielding, and criticality control. If confinement, shielding, or criticality control are maintained, the environmental impacts from an accident would be insignificant.

There are no changes to cask design or fabrication requirements in the renewed initial certificate or Amendment No. 1. Because there are no significant design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of the renewal of the initial certificate and Amendment No. 1 would remain well within the 10 CFR part 20 limits.

Decommissioning of dry cask spent fuel storage systems under a general license would be carried out as part of a power reactor's site decommissioning plan. In general, decommissioning would consist of removing the spent fuel from the site, decontaminating cask surfaces, and decontaminating and dismantling the independent spent fuel storage installation where the casks were deployed. Under normal and off-normal operating conditions, no residual contamination is expected to be left behind on supporting structures. The incremental impacts associated with decommissioning dry cask storage installations are expected to represent a small fraction of the impacts of decommissioning an entire nuclear power station.

In summary, the proposed changes will not result in any radiological or nonradiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. Compliance with the requirements of 10 CFR parts 20 and 72 would provide reasonable assurance that adequate protection of public health and safety will continue. The NRC, in its SER for the renewal of the TN–68 Dry Storage Cask system, has determined if the conditions specified in the certificate of compliance to implement these regulations are met, adequate protection of public health and safety will continue to be reasonably assured.

Based on the previously stated assessments and its SER for the requested renewal of the TN–68 Dry Storage Cask certificates, the NRC has determined that the expiration date of this system in 10 CFR 72.214 can be safely extended for an additional 40 years, and that commercial nuclear power reactor licensees can continue using the system during this period under a general license without significant impacts on the human environment.

D. Alternative to the Action

The alternative to this action is to deny approval of the renewal and not issue the direct final rule. Under this alternative, the NRC would either (1) require general licensees using the TN–68 Dry Storage Cask to unload the spent fuel from these systems and either return it to a spent fuel pool or re-load it into a different dry storage cask system listed in § 72.214; or (2) require that users of the existing TN–68 Dry Storage Cask request site-specific licensing proceedings to continue storage in these systems.

The environmental impacts of requiring the licensee to unload the spent fuel and either return it to the spent fuel pool or re-load it into another NRC-approved cask system would result in increased radiological doses to workers. These increased doses would be due primarily to direct radiation from the casks while the workers unloaded, transferred, and re-loaded the spent fuel. These activities would consist of transferring the dry storage canisters to a cask-handling building, opening the canister lid welds, returning the canister to a spent fuel pool or dry transfer facility, removing the fuel assemblies, and re-loading them, either into a spent fuel pool storage rack or another NRC-approved dry storage system. In addition to the increased occupational doses to workers, these activities may also result in additional liquid or gaseous effluents.

Alternatively, users of the dry cask storage system would need to apply for a site-specific license. Under this option for implementing the no-action

alternative, interested licensees would have to prepare, and the NRC would have to review, each separate license application, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

In summary, the no-action alternative would entail either (1) more environmental impacts than the preferred action from transferring the spent fuel now in the TN–68 Dry Storage Cask; or (2) cost and administrative impacts from multiple licensing actions that, in aggregate, are likely to be the same as, or more likely greater than, the preferred action.

E. Alternative Use of Resources

Renewal of the initial certificate and Amendment No. 1 to Certificate of Compliance No. 1027 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the foregoing environmental assessment, the NRC concludes that this direct final rule, ''List of Approved Spent Fuel Storage Casks: TN Americas LLC, TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, Renewal of Initial Certificate and Amendment No. 1,'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and TN Americas LLC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if (1) it notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On April 28, 2000 (65 FR 24855), the NRC issued an amendment to 10 CFR part 72 that approved the TN Americas LLC, TN–68 Dry Storage Cask by adding it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1027.

On April 9, 2020, and as supplemented on July 29, 2020; February 9, 2021; and March 24, 2021, TN Americas LLC requested a renewal of the initial certificate and Amendment No. 1 of the TN–68 Dry Storage Cask system for an additional 40 years beyond the initial certificate term as discussed in Section IV, ''Discussion of Changes,'' of this document. Because TN Americas LLC filed its renewal application at least 30 days before the certificate expiration date of May 20, 2020, pursuant to the timely renewal provisions in § 72.240(b), the initial issuance of the certificate and Amendment No. 1 of Certificate of Compliance No. 1027 did not expire during the pendency of the NRC's review.

The alternative to this action is to deny approval of the renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 and end this direct final rule. Under this alternative, the NRC would either (1) require general licensees using the TN–68 Dry Storage Cask system to unload spent fuel from these systems and return it to a spent fuel pool or re-load it into a different dry storage cask system listed in § 72.214, or (2) require that users of the existing TN–68 Dry Storage Cask system request site-specific licensing proceedings to continue storage in these systems. Therefore, the no-action alternative would result in a significant burden on licensees and an additional inspection or licensing caseload on the NRC. In addition, the no action alternative would entail either (1) more environmental impacts than the preferred action from transferring the spent fuel now in the TN–68 Dry Storage Cask system, or (2) cost and administrative impacts from multiple licensing actions that, in aggregate, are likely to be the same as, or more likely greater than, the preferred action.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary SER and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory; therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule renews Certificate of Compliance No. 1027 for the TN Americas LLC, TN–68 Dry Storage Cask system, as currently listed in § 72.214, to extend the expiration date of the initial certificate and Amendment No. 1 by 40 years. The renewed initial certificate and Amendment No. 1 consist of the changes previously described, as set forth in the revised certificate of compliance and technical specifications.

Extending the effective date of the initial certificate and Amendment No. 1 for 40 more years and requiring the implementation of aging management activities does not impose any modification or addition to the design of a cask system's SSCs, or to the procedures or organization required to operate the system during the initial 20-year storage period of the system, as authorized by the current certificate. General licensees that have loaded these

casks, or that load these casks in the future under the specifications of the applicable certificate, may continue to store spent fuel in these systems for the initial 20-year storage period consistent with the original certificate. The aging management activities required to be implemented by this renewal are only required after the storage cask system's initial 20-year service period ends. As explained in the 2011 final rule that amended 10 CFR part 72 (76 FR 8872, Question I), the general licensee's authority to use a particular storage cask design under an approved certificate of compliance terminates 20 years after the date that the general licensee first loads the particular cask with spent fuel, unless the cask's certificate of compliance is renewed. Because this rulemaking renews the initial certificate and Amendment No. 1, and renewal is a separate licensing action voluntarily implemented by vendors, the renewal of the initial certificate and Amendment No. 1 is not an imposition of new or changed requirements from which these licensees would otherwise be protected by the backfitting provisions in § 72.62.

Even if renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 could be considered a backfit, TN Americas LLC, as the holder of the certificate of compliance and vendor of the casks, is not protected by the backfitting provisions in § 72.62.

Unlike a vendor, general licensees using the existing systems subject to this renewal would be protected by the backfitting provisions in § 72.62 if the renewal constituted new or changed requirements applicable during the initial 20-year storage period. But, as previously explained, renewal of the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027 does not impose such requirements. The general licensee using the initial certificate or Amendment No. 1 of Certificate of Compliance No. 1027 may continue storing material in its respective cask systems for the initial 20-year storage period identified in the applicable certificate or amendment with no changes. If general licensees choose to continue to store spent fuel in the TN–68 Dry Storage Cask system after the initial 20-year period, these general licensees will be required to implement aging management activities for any cask systems subject to a renewed certificate of compliance, but such continued use is voluntary.

For these reasons, renewing the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027, and imposing the additional conditions previously discussed, does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons, as indicated.

Document	ADAMS accession No.
TN Americas LLC Renewal Application for the TN–68 Dry Storage Cask Certificate of Compliance No. 1027, dated April 9, 2020.	ML20100F295
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, dated July 29, 2020.	ML20211L707
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, dated February 9, 2021.	ML21040A406
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, dated March 24, 2021.	ML21083A029
User Need Memorandum for Rulemaking for Certificate of Compliance Renewal, Initial Issue (Amendment Number 0), Amendment Number 1 to TN–68 Dry Storage Cask, dated September 20, 2021.	ML21174A125
Preliminary Safety Evaluation Report for the TN–32 Dry Storage Cask Certificate of Compliance Renewal	ML21174A128
Proposed Certificate of Compliance No. 1027, Renewed Initial Certificate	ML21174A126
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1027, Renewed Initial Certificate	ML21174A129
Proposed Certificate of Compliance No. 1027, Renewed Amendment No. 1	ML21174A127
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1027, Renewed Amendment No. 1	ML21174A131

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2021–0161.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1027 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1027.

Initial Certificate Effective Date: May 30, 2000, superseded by Renewed Initial Certificate on February 22, 2022.

Amendment Number 1 Effective Date: October 30, 2007, superseded by

Renewed Amendment Number 1 on February 22, 2022.

SAR Submitted by: Transnuclear, Inc., now TN Americas LLC.

Renewal SAR Submitted by: TN Americas LLC.

SAR Title: Final Safety Analysis Report for the TN–68 Dry Storage Cask.

Docket Number: 72–1027.

Certificate Expiration Date: May 28, 2020.

Renewed Certificate Expiration Date: May 28, 2060.

Model Number: TN–68.

* * * * *

Dated: November 29, 2021.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2021–26628 Filed 12–8–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0953; Project Identifier AD–2021–01169–T; Amendment 39–21810; AD 2021–23–12]

RIN 2120–AA64

Airworthiness Directives; Transport and Commuter Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band). This AD requires revising the limitations section of the existing airplane/aircraft flight manual (AFM) to incorporate limitations prohibiting certain operations requiring radio altimeter data when in the presence of 5G C-Band interference as identified by Notices to Air Missions (NOTAMs). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 9, 2021.

The FAA must receive comments on this AD by January 24, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0953; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

In March 2020, the United States Federal Communications Commission (FCC) adopted final rules authorizing flexible use of the 3.7–3.98 GHz band for next generation services, including 5G and other advanced spectrum-based services.[1] Pursuant to these rules, C-Band wireless broadband deployment is permitted to occur in phases with the opportunity for operations in the lower 100 megahertz of the band (3.7–3.8 GHz) in 46 markets beginning as soon as December 5, 2021; however, the FAA does not expect actual deployment to commence until January 5, 2022. This AD refers to ''5G C-Band'' interference, but wireless broadband technologies, other than 5G, may use the same frequency band.[2] These other uses of the same frequency band are within the scope of this AD since they would introduce the same risk of radio altimeter interference as 5G C-Band.

In April 2020, RTCA formed a 5G Task Force, including members from RTCA, the FAA, aircraft and radio altimeter manufacturers, European Organisation for Civil Aviation Equipment (EUROCAE), industry organizations, and operators, to perform ''a quantitative evaluation of radar altimeter performance regarding RF interference from expected 5G emissions in the 3.7–3.98 GHz band, as well as a detailed assessment of the risk of such interference occurring and impacting aviation safety.'' [3] Based on the work of the task force, RTCA published a report which concludes that there is ''a major risk that 5G telecommunications systems in the 3.7–3.98 GHz band will cause harmful interference to radar altimeters on all types of civil aircraft—including commercial transport airplanes; business, regional, and general aviation airplanes; and both transport and general aviation helicopters.'' [4]

The report further concludes that the likelihood and severity of radio frequency interference increases for operations at lower altitudes. That interference could cause the radio altimeter to either become inoperable or present misleading information, and/or also affect associated systems on civil aircraft. The RTCA report refers to FCC Report and Order (R&O) FCC 20–22,[5] which identifies radio frequencies and power level conditions for the new C-Band services. The RTCA report identified the possibility of interference from both wireless emitters (on base stations, for example) as well as onboard user handsets. The RTCA report and conclusions remain under review, including by federal spectrum regulators. The FAA risk assessment included consideration of the RTCA report, public comments to the RTCA report, and analyses from radio altimeter manufacturers and aircraft manufacturers in support of the safety risk determination. The analyses FAA considered were consistent with RTCA's conclusions pertaining to radio altimeter interference from C-Band

[1] The FCC's rules did not make C-Band wireless broadband available in Alaska, Hawaii, and the U.S. Territories.

[2] The regulatory text of the AD uses the term ''5G C-Band'' which, for purposes of this AD, has the same meaning as ''5G'', ''C-Band'' and ''3.7–3.98 GHz''

[3] RTCA Paper No. 274–20/PMC–2073, Assessment of C-Band Mobile Telecommunications Interference Impact on Low Range Radar Altimeter Options, dated October 7, 2020 (RTCA Paper No. 274–20/PMC–2073), page i. This document is available in Docket No. FAA–2021–0953, and at *https://www.rtca.org/wp-content/uploads/2020/10/SC-239-5G-Interference-Assessment-Report_274-20-PMC-2073_accepted_changes.pdf.*

[4] RTCA Paper No. 274–20/PMC–2073, page i.

[5] FCC Report and Order (R&O) FCC 20–22 in the Matter of Expanding Flexible Use of the 3.7–4.2 GHz Band, adopted February 28, 2020, and released March 3, 2020. This document is available in Docket No. FAA–2021–0953, and at *https://www.fcc.gov/document/fcc-expands-flexible-use-c-band-5g-0.*

emissions. The FAA determined that, at this time, no information has been presented that shows radio altimeters are not susceptible to interference caused by C-Band emissions permitted in the United States.

Additionally, the deployment of C-Band wireless broadband networks is occurring globally. In certain countries, deployment has already occurred in C-Band frequencies. In some countries, temporary technical, regulatory, and operational mitigations on C-Band systems have been implemented while aviation authorities complete their safety assessments. Under the FCC rules adopted in 2020, base stations in rural areas of the United States are permitted to emit at higher levels in comparison to other countries which may affect radio altimeter equipment accuracy and reliability.

The radio altimeter is an important aircraft instrument, and its intended function is to provide direct height-above-terrain/water information to a variety of aircraft systems. Commercial aviation radio altimeters operate in the 4.2–4.4 GHz band, which is separated by 220 megahertz from the C-Band telecommunication systems in the 3.7–3.98 GHz band. The radio altimeter is more precise than a barometric altimeter and for that reason is used where aircraft height over the ground needs to be precisely measured, such as autoland or other low altitude operations. The receiver on the radio altimeter is typically highly accurate, however it may deliver erroneous results in the presence of out-of-band radiofrequency emissions from other frequency bands. The radio altimeter must detect faint signals reflected off the ground to measure altitude, in a manner similar to radar. Out-of-band signals could significantly degrade radio altimeter functions during critical phases of flight, if the altimeter is unable to sufficiently reject those signals.

Many operators need to be able to land in low visibility conditions. These operators employ specially certified equipment and flightcrew training in order to be able to fly closer to the ground during approach in instrument conditions, in some cases all the way through the landing phase, without visual reference to the runway environment. These operations can only be conducted with reference to actual height above the ground, as measured by a radio altimeter.

Additionally, automatic and/or manual flight guidance systems on airplanes facilitate low visibility operations and rely on accurate radio altimeter inputs. These inputs determine when and where the aircraft flares for landing, when power reductions are made for landing, and when automated crosswind controls and other control inputs are made. Anomalous (missing or erroneous) radio altimeter inputs to these systems may cause the aircraft to be maneuvered in an unexpected or hazardous manner during the final stages of approach and landing, and may not be detectable by the pilot in time to maintain continued safe flight and landing. Inaccurate radio altimeter data can result in pilots not trusting their instruments, eroding the foundation on which all instrument flight training is built.

Although the FAA has determined the operations immediately at risk are those requiring a radio altimeter to land in low visibility conditions, a wide range of other automated safety systems rely on radio altimeter data. Harmful interference to the radio altimeter could cause these systems to operate in an unexpected way. The FAA continues to work with inter-agency and industry stakeholders to collect data on potential effects to these systems to determine whether additional mitigations are necessary. The FAA determined, however, that mandatory action is not immediately required for these systems.

The FAA plans to use data provided by telecommunications providers to determine which airports within the United States have or will have C-Band base stations or other devices that could potentially impact airplane systems. NOTAMs will be issued, as necessary, to state the specific airports where the data from a radio altimeter may be unreliable due to the presence of 5G C-Band wireless broadband signals.[6] For this reason, this AD requires flight manual limitations that prohibit certain operations requiring radio altimeter data at locations that will be identified by NOTAMs. Due to the dynamic nature of both the base station activation and the ongoing process of identifying the resulting affected airspace, including potential consideration for variability in C-Band deployment conditions such as radiated power levels and locations, the FAA has determined that NOTAMs are the best means to communicate changes in restrictions at affected airports.

Finally, the FAA notes that in accordance with paragraph (h) of this AD, any person may propose and request FAA approval of an alternative method of compliance (AMOC). The proposed AMOC must include specific conditions that would address the unsafe condition (*e.g.,* by providing information substantiating that certain aircraft or altimeter models are not susceptible to C-Band radiofrequency interference).

[6] The FAA's process for issuing NOTAMs is described in FAA Order 7930.2S, *Notices to Air Missions (NOTAM),* December 2, 2021.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition as described previously is likely to exist or develop in transport and commuter category airplanes with a radio altimeter as part of their type design.

AD Requirements

This AD requires revising the limitations section of the existing AFM to incorporate limitations prohibiting certain operations requiring radio altimeter data when in the presence of 5G C-Band wireless broadband signals as identified by NOTAM. These limitations could prevent dispatch of flights to certain locations with low visibility, and could also result in flight diversions.

Compliance With AFM Revisions

Section 91.9 prohibits any person from operating a civil aircraft without complying with the operating limitations specified in the AFM. FAA regulations also require operators to furnish pilots with any changes to the AFM (14 CFR 121.137) and pilots in command to be familiar with the AFM (14 CFR 91.505).

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this

rule because radio altimeter anomalies that are undetected by the aircraft automation or pilot, particularly close to the ground (*e.g.,* landing flare), could lead to loss of continued safe flight and landing. The urgency is based on C-Band wireless broadband deployment, which is expected to occur in phases with operations beginning as soon as January 5, 2022. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0953 and Project Identifier AD–2021–01169–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

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 AD 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 AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Impact on Intrastate Aviation in Alaska

For the reasons discussed above, this AD will not affect intrastate aviation in Alaska.

Costs of Compliance

The FAA estimates that this AD affects 6,834 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$580,890

As previously discussed, there may be other impacts to aviation; however there remains uncertainty as to cost due to various factors such as which airports within the United States have, or will have, base stations or other devices that could interfere with aircraft radio altimeters.

Authority for This Rulemaking

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

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

Regulatory Findings

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–23–12 Transport and Commuter Category Airplanes: Amendment 39–21810; Docket No. FAA–2021–0953; Project Identifier AD–2021–01169–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. These radio altimeters are installed on various transport and commuter category airplanes including, but not limited to, the airplanes for which the design approval holder is identified in paragraphs (c)(1) through (19) of this AD.

(1) The Boeing Company
(2) Airbus SAS
(3) Bombardier Inc.
(4) Embraer S.A.
(5) Gulfstream Aerospace Corporation
(6) Gulfstream Aerospace LP
(7) Textron Aviation Inc.
(8) Pilatus Aircraft Limited
(9) Fokker Services B.V.
(10) Saab AB, Support and Services
(11) DeHavilland Aircraft of Canada Limited
(12) Airbus Canada Limited Partnership
(13) ATR–GIE Avions de Transport Régional
(14) Yaborã Indústria Aeronáutica S.A.
(15) MHI RJ Aviation ULC
(16) BAE Systems (Operations) Limited
(17) Lockheed Martin Corporation/Lockheed Martin Aeronautics Company
(18) Viking Air Limited
(19) Dassault Aviation

(d) Subject

Air Transport Association (ATA) of America Code 31, Indicating/Recording System; 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band). The FAA is issuing this AD because radio altimeter anomalies that are undetected by the automation or pilot, particularly close to the ground (*e.g.,* landing flare), could lead to loss of continued safe flight and landing.

(f) Compliance

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

(g) Airplane/Aircraft Flight Manual (AFM) Revision

On or before January 4, 2022: Revise the Limitations Section of the existing AFM by incorporating the limitations specified in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of this AD into the existing AFM.

Figure 1 to paragraph (g) – *AFM Revision*

(Required by AD 2021-23-12)

Radio Altimeter Flight Restrictions

When operating in U.S. airspace, the following operations requiring radio altimeter are prohibited in the presence of 5G C-Band wireless broadband interference as identified by NOTAM (NOTAMs will be issued to state the specific airports where the radio altimeter is unreliable due to the presence of 5G C-Band wireless broadband interference):

- Instrument Landing System (ILS) Instrument Approach Procedures (IAP) SA CAT I, SA CAT II, CAT II, and CAT III
- Required Navigation Performance (RNP) Procedures with Authorization Required (AR), RNP AR IAP
- Automatic Landing operations
- Manual Flight Control Guidance System operations to landing/head-up display (HUD) to touchdown operation
- Use of Enhanced Flight Vision System (EFVS) to touchdown under 14 CFR 91.176(a)

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Operational Safety Branch, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(i) Related Information

For more information about this AD, contact Brett Portwood, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 817–222–5390; email: *operationalsafety@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on December 7, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–26777 Filed 12–7–21; 2:00 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0879; Project Identifier MCAI–2020–01494–E; Amendment 39–21773; AD 2021–21–13]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

Republication

Editorial Note: Rule document 2021–25005 was originally published on pages 64066 through 64068 in the issue of Wednesday,

November 17, 2021. On page 64068, in the first column, in paragraph (a), in the second line, ''January 3, 2022'' should have read ''December 2, 2021''. The corrected document is republished in its entirety.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd. & Co KG (RRD) Trent 1000 model turbofan engines. This AD was prompted by the manufacturer revising the engine Time Limits Manual (TLM) life limits of certain critical rotating parts and direct accumulation counting data files. This AD requires the operator to revise the airworthiness limitation section (ALS) of their existing approved aircraft maintenance program (AMP) by incorporating the revised tasks of the applicable TLM for each affected model turbofan engine, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 2, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 2, 2021.

The FAA must receive comments on this AD by January 3, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0879.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0879; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Kevin M. Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0242, dated November 5, 2020 (EASA AD 2020–0242) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain RRD Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H model turbofan engines.

This AD was prompted by the manufacturer revising the engine TLM life limits of certain critical rotating parts and updating certain maintenance tasks. The FAA is issuing this AD to address the failure of critical rotating parts.

FAA's Determination

These engines have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified about the unsafe condition described in the EASA AD referenced in this proposed AD. The FAA is issuing this AD because the agency evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2020–0242. EASA AD 2020–0242 specifies procedures for revising the approved AMP by incorporating the limitations, tasks, and associated thresholds and intervals described in the TLM.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Chapter 05–10 of Rolls-Royce (RR) Trent 1000 TLM T–TRENT–10RRB, dated August 1, 2020. RR Trent 1000 TLM T–TRENT–10RRB, Chapter 05–10, identifies the reduced life limits of certain critical rotating parts.

The FAA also reviewed Chapter 05–20 of RR Trent 1000 TLM T–TRENT–10RRB, dated August 1, 2020. RR Trent 1000 TLM T–TRENT–10RRB, Chapter 05–20, identifies the critical rotating part inspection thresholds and intervals.

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2020–0242, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0242 will be incorporated in this final rule. This AD, therefore, requires compliance with EASA AD 2020–0242 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2020–0242 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2020–0242. Service information required by EASA AD 2020–0242 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0879.

Differences Between This AD and the MCAI

This AD does not mandate the ''Maintenance Tasks and Replacement of Critical Parts'' and ''Corrective Action(s)'' sections of EASA AD 2020–0242. Where EASA AD 2020–0242 requires compliance from its effective date, this AD requires using the effective date of this AD. Where EASA AD 2020–0242 requires revising the approved AMP within 12 months from its effective date, this AD requires revising the existing approved AMP within 90 days after the effective date of this AD. This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2020–0242.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

The FAA justifies waiving notice and comment prior to adoption of this rule because no domestic operators use this product. It is unlikely that the FAA will receive any adverse comments or useful information about this AD from any U.S. operator. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reason, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0879; Project Identifier MCAI–2020–01494–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

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 AD 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 AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Kevin M. Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 0 engines installed on airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS of the AMP	1 work-hour × $85 per hour = $85	$0	$85	$0

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–21–13 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–21773; Docket No. FAA–2021–0879; Project Identifier MCAI–2020–01494–E.

(a) Effective Date

This airworthiness directive (AD) is effective December 2, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd. & Co KG (RRD) (Type Certificate previously held by Rolls-Royce plc) Trent 1000–A, Trent 1000–AE, Trent 1000–C, Trent 1000–CE, Trent 1000–D, Trent 1000–E, Trent 1000–G, and Trent 1000–H model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the engine Time Limits Manual life limits of certain critical rotating parts and direct accumulation counting data files. The FAA is issuing this AD to prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, EASA AD 2020–0242, dated November 5, 2020 (EASA AD 2020–0242).

(h) Exceptions to EASA AD 2020–0242

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0242 are not required by this AD.

(2) Where EASA AD 2020–0242 requires compliance from its effective date, this AD requires using the effective date of this AD.

(3) Paragraph (3) of EASA AD 2020–0242 specifies revising the approved aircraft maintenance program (AMP) within 12 months after its effective date, but this AD requires revising the existing approved AMP within 90 days after the effective date of this AD.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2020–0242.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Kevin M. Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0242, dated November 5, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0242, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0879.

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

Issued on October 8, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. R1–2021–25005 Filed 12–8–21; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0796; Project Identifier MCAI–2021–00098–R; Amendment 39–21824; AD 2021–24–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS355NP helicopters. This AD was prompted by a report of mechanical deformation found on the protective cover (also referred to as switch guard) of the ''SHEAR'' control pushbutton installed on a co-pilot collective stick of a Model EC225LP helicopter, caused by incorrect handling; due to having an identical design switch guard installed on the pilot collective stick, Model AS355NP helicopters are also affected. This AD requires replacement of the protective cover of the ''SHEAR'' control pushbutton, and re-identification of the pilot collective stick, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 13, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0796.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by

searching for and locating Docket No. FAA–2021–0796; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0027R1, dated January 22, 2021 (EASA AD 2021–0027R1), to correct an unsafe condition for all Airbus Helicopters (formerly Eurocopter) Model AS355NP helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS355NP helicopters. The NPRM published in the **Federal Register** on September 23, 2021 (86 FR 52853). The NPRM was prompted by a report of mechanical deformation found on the protective cover (also referred to as switch guard) of the ''SHEAR'' control pushbutton installed on a co-pilot collective stick of a Model EC225LP helicopter, caused by incorrect handling; due to having an identical design switch guard installed on the pilot collective stick, Model AS355NP helicopters are also affected. The NPRM proposed to require replacement of the protective cover of the ''SHEAR'' control pushbutton, and re-identification of the pilot collective stick, as specified in EASA AD 2021–0027R1.

The FAA is issuing this AD to address mechanical deformation on the protective cover of the ''SHEAR'' control pushbutton installed on the pilot collective stick. The unsafe condition, if not addressed, could result in unintended shearing of the hoist cable, possibly resulting in injury to hoisted person(s). See EASA AD 2021–0027R1 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0027R1 requires replacement of the protective cover of the ''SHEAR'' control pushbutton, and re-identification of the pilot collective stick. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 2 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$360	$530	$1,060

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–24–03 Airbus Helicopters: Amendment 39–21824; Docket No. FAA–2021–0796; Project Identifier MCAI–2021–00098–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS355NP helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by a report of mechanical deformation found on the protective cover (also referred to as switch guard) of the ''SHEAR'' control pushbutton installed on a co-pilot collective stick of a Model EC225LP helicopter, caused by incorrect handling; due to having an identical design switch guard installed on the pilot collective stick, Model AS355NP helicopters are also affected. The FAA is issuing this AD to address mechanical deformation on the protective cover of the ''SHEAR'' control pushbutton installed on the pilot collective stick. The unsafe condition, if not addressed, could result in unintended shearing of the hoist cable, possibly resulting in injury to hoisted person(s).

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0027R1, dated January 22, 2021 (EASA AD 2021–0027R1).

(h) Exceptions to EASA AD 2021–0027R1

(1) Where EASA AD 2021–0027R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not require the ''Remarks'' section of EASA AD 2021–0027R1.

(i) Flight Condition Limitation

As of the effective date of this AD: Do not perform external load operations until the modification required by Paragraph (1) of EASA AD 2021–0027R1 is complete.

(j) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0027R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 950 L'Enfant Plaza N SW, Washington, DC 20024; phone: (202) 267–9167; email: *hal.jensen@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0027R1, dated January 22, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0027R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0796.

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

Issued on November 10, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–26604 Filed 12–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0954; Project Identifier AD–2021–01170–R; Amendment 39–21811; AD 2021–23–13]

RIN 2120–AA64

Airworthiness Directives; Various Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all helicopters equipped with a radio (also known as radar) altimeter. This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band). This AD requires revising the limitations section of the existing rotorcraft flight manual (RFM) for your helicopter to incorporate limitations prohibiting certain operations requiring radio altimeter data when in the presence of 5G C-Band interference in areas as identified by Notices to Air Missions (NOTAMs). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 9, 2021.

The FAA must receive comments on this AD by January 24, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0954; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dave Swartz, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 222 W 7th Ave., M/S #14 Anchorage, AK 99513; phone: 817–222–5390; email: *operationalsafety@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

In March 2020, the United States Federal Communications Commission (FCC) adopted final rules authorizing flexible use of the 3.7–3.98 GHz band for next generation services, including 5G and other advanced spectrum-based services.[1] Pursuant to these rules, C-Band wireless broadband deployment is permitted to occur in phases with the opportunity for operations in the lower 100 megahertz of the band (3.7–3.8 GHz) in 46 markets beginning as soon as December 5, 2021; however, the FAA does not expect actual deployment to commence until January 5, 2022. This AD refers to ''5G C-Band'' interference, but wireless broadband technologies, other than 5G, may use the same frequency band.[2] These other uses of the same frequency band are within the scope of this AD since they would introduce the same risk of radio altimeter interference as 5G C-Band.

In April 2020, RTCA formed a 5G Task Force, including members from RTCA, the FAA, aircraft and radio altimeter manufacturers, European Organisation for Civil Aviation Equipment (EUROCAE), industry organizations, and operators, to perform ''a quantitative evaluation of radar altimeter performance regarding RF interference from expected 5G emissions in the 3.7–3.98 GHz band, as well as a detailed assessment of the risk of such interference occurring and impacting aviation safety.'' [3] Based on the work of the task force, RTCA published a report, which concluded that there is ''a major risk that 5G telecommunications systems in the 3.7–3.98 GHz band will cause harmful interference to radar altimeters on all types of civil aircraft—including commercial transport airplanes; business, regional, and general aviation airplanes; and both transport and general aviation helicopters.'' [4]

The report further concludes that the likelihood and severity of radio frequency interference increases for operations at lower altitudes. That interference could cause the radio altimeter to either become inoperable or present misleading information, and/or also affect associated systems on civil aircraft. The RTCA report refers to FCC Report and Order (R&O) FCC 20–22,[5] which identifies radio frequencies and power level conditions for the new C-Band services. The RTCA report identified the possibility of interference from both wireless emitters (on base stations, for example) as well as onboard user handsets. The RTCA report and conclusions remain under review, including by federal spectrum regulators. The FAA risk assessment included consideration of the RTCA report, public comments to the RTCA report, and analyses from radio altimeter manufacturers and aircraft manufacturers in support of the safety risk determination. The analyses FAA considered were consistent with RTCA's conclusions pertaining to radio altimeter interference from C-Band emissions. The FAA determined that, at this time, no information has been presented that shows radio altimeters are not susceptible to interference caused by C-Band emissions permitted in the United States.

Additionally, the deployment of C-Band wireless broadband networks is occurring globally. In certain countries, deployment has already occurred in C-Band frequencies. In some countries, temporary technical, regulatory, and operational mitigations on C-Band systems have been implemented while aviation authorities complete their safety assessments. Under the FCC rules adopted in 2020, base stations in rural areas of the United States are permitted to emit at higher levels in comparison to other countries.

The radio altimeter is an important aircraft instrument, and its intended function is to provide direct height-above-terrain/water information to a variety of aircraft systems. Commercial aviation radio altimeters operate in the 4.2–4.4 GHz band, which is separated by 220 megahertz from the C-Band telecommunication systems in the 3.7–3.98 GHz band. The radio altimeter is more precise than a barometric altimeter and for that reason is used where aircraft height over the ground needs to be precisely measured, such as autohover or other low altitude operations. The receiver on the radio altimeter typically is highly accurate, however it may deliver erroneous results in the presence of out-of-band radio frequency emissions from other frequency bands. The radio altimeter must detect faint signals reflected off the ground to measure altitude, in a manner similar to radar. Out-of-band signals could significantly degrade radio altimeter functions during critical phases of flight, if the altimeter is unable to sufficiently reject those signals.

Many operators need to be able to land in low visibility conditions. These operators employ specially certified equipment and flightcrew training in order to be able to fly closer to the ground during approach in instrument conditions without visual reference to the landing environment. These operations can only be conducted with reference to actual height above the ground, as measured by a radio altimeter.

Additionally, automatic and/or manual flight guidance systems on helicopters facilitate low visibility operations and rely on accurate radio altimeter inputs. These inputs may provide height data for landing and takeoff for Category A and Category B operations. Anomalous (missing or erroneous) radio altimeter inputs to these systems may cause the aircraft to be maneuvered in an unexpected or hazardous manner during the final stages of approach and landing, and may not be detectable by the pilot in time to maintain continued safe flight and landing. Inaccurate radio altimeter data can result in pilots not trusting their instruments, eroding the foundation on which all instrument flight training is built.

[1] The FCC's rules did not make C-Band wireless broadband available in Alaska, Hawaii, and the U.S. Territories.

[2] The regulatory text of the AD uses the term ''5G C-Band'' which, for purposes of this AD, has the same meaning as ''5G'', ''C-Band'' and ''3.7–3.98 GHz.''

[3] RTCA Paper No. 274–20/PMC–2073, Assessment of C-Band Mobile Telecommunications Interference Impact on Low Range Radar Altimeter Options, dated October 7, 2020 (RTCA Paper No. 274–20/PMC–2073), page i. This document is available in Docket No. FAA–2021–0954, and at *https://www.rtca.org/wp-content/uploads/2020/10/SC-239-5G-Interference-Assessment-Report_274-20-PMC-2073_accepted_changes.pdf*.

[4] RTCA Paper No. 274–20/PMC–2073, page i.

[5] FCC Report and Order (R&O) FCC 20–22 in the Matter of Expanding Flexible Use of the 3.7–4.2 GHz Band, adopted February 28, 2020, and released March 3, 2020. This document is available in Docket No. FAA–2021–0954, and at *https://www.fcc.gov/document/fcc-expands-flexible-use-c-band-5g-0*.

Although the FAA has determined operations immediately at risk are those requiring a radio altimeter to takeoff, land, or establish and maintain a hover, a wide range of automated safety systems rely on radio altimeter data. The FAA continues to work with inter-agency and industry stakeholders to collect data on potential effects to these systems to determine whether additional mitigations are necessary. The FAA determined, however, that mandatory action is not immediately required for these systems.

The FAA plans to use data provided by telecommunications providers to determine which heliports, airports, or areas within the United States have or will have C-Band base stations or other devices that could potentially impact helicopter systems. NOTAMs will be issued, as necessary, to state the specific areas where the data from a radio altimeter may be unreliable due to the presence of 5G C-Band wireless broadband signals.[6] For this reason, this AD requires flight manual limitations that prohibit certain operations requiring radio altimeter data in areas that will be identified by NOTAMs. Due to the dynamic nature of base station activation and the ongoing process of identifying the resulting affected airspace, including potential consideration for variability in C-Band deployment conditions such as radiated power levels and locations, the FAA has determined that NOTAMs are the best means to communicate changes in restrictions within affected areas.

Finally, the FAA notes that in accordance with paragraph (h) of this AD, any person may propose and request FAA approval of an alternative method of compliance (AMOC). The proposed AMOC must include specific conditions that would address the unsafe condition (*e.g.,* by providing information substantiating that certain aircraft or altimeter models are not susceptible to C-Band radio frequency interference).

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in helicopters with a radio altimeter as part of their type design.

AD Requirements

This AD requires revising the limitations section of the existing RFM for your helicopter to incorporate limitations prohibiting certain operations requiring radio altimeter data when in the presence of 5G C-Band wireless broadband signals in areas as identified by NOTAM.

These prohibitions could prevent flights and could also result in flight diversions.

Compliance With RFM Revisions

Section 91.9 prohibits any person from operating a civil aircraft without complying with the operating limitations specified in the RFM.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because radio altimeter anomalies that are undetected by the aircraft automation or pilot, particularly close to the ground, could lead to loss of continued safe flight and landing. The urgency is based on C-Band wireless broadband deployment, which is expected to occur in phases with operations beginning as soon as January 5, 2022. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0954 and Project Identifier AD–2021–01170–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

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 AD 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 AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dave Swartz, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 222 W. 7th Ave, M/S #14 Anchorage, AK 99513; phone: 817–222–5390; email: *operationalsafety@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to

[6] The FAA's process for issuing NOTAMs is described in FAA Order 7930.2S, *Notices to Air Missions (NOTAM),* December 2, 2021.

adopt this rule without prior notice and comment, RFA analysis is not required.

Impact on Intrastate Aviation in Alaska

For the reasons discussed above, this AD will not affect intrastate aviation in Alaska.

Costs of Compliance

The FAA estimates that this AD affects 1,828 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Revising the existing RFM for your helicopter would take about 1 work-hour for an estimated cost of $85 per helicopter or $155,380 for the U.S. fleet.

As previously discussed, there may be other impacts to aviation; however there remains uncertainty as to cost due to various factors such as which areas within the United States have, or will have, base stations or other devices that could interfere with aircraft radio altimeters.

Authority for This Rulemaking

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

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

Regulatory Findings

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–23–13 Various Helicopters: Amendment 39–21811; Docket No. FAA–2021–0954; Project Identifier AD–2021–01170–R.

(a) Effective Date

This airworthiness directive (AD) is effective December 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all helicopters, certificated in any category, equipped with a radio (also known as radar) altimeter. These radio altimeters are installed on various helicopter models including, but not limited to, the helicopters for which the design approval holder is identified in paragraphs (c)(1) through (20) of this AD.

(1) Airbus Helicopters
(2) Airbus Helicopters Deutschland GmbH
(3) Air Space Design and Manufacturing, LLC
(4) Bell Textron Canada Limited
(5) Bell Textron Inc.
(6) Brantly International, Inc.
(7) Centerpointe Aerospace Inc.
(8) Columbia Helicopters, Inc.
(9) The Enstrom Helicopter Corporation
(10) Erickson Air-Crane Incorporated, DBA Erickson Air-Crane
(11) Helicopteres Guimbal
(12) Siam Hiller Holdings, Inc.
(13) Kaman Aerospace Corporation
(14) Leonardo S.p.a.
(15) MD Helicopters Inc.
(16) PZL Swidnik S.A.
(17) Robinson Helicopter Company
(18) Schweizer RSG LLC
(19) Scotts-Bell 47 Inc.
(20) Sikorsky Aircraft Corporation

(d) Subject

Joint Aircraft Service Component (JASC) Code: 3444, Ground Proximity System.

(e) Unsafe Condition

This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band). The FAA is issuing this AD because radio altimeter anomalies that are undetected by the automation or pilot, particularly close to the ground, could lead to loss of continued safe flight and landing.

(f) Compliance

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

(g) Rotorcraft Flight Manual (RFM) Revision

On or before January 4, 2022: Revise the Limitations Section of the existing RFM for your helicopter by incorporating the limitations specified in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of this AD into the existing RFM for your helicopter. The action required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417 or 14 CFR 135.439.

Figure 1 to paragraph (g) – *RFM Revision*

(Required by AD 2021-23-13)

Radio Altimeter Flight Restrictions

When operating in U.S. airspace, the following operations requiring radio altimeter are prohibited in the presence of 5G C-Band wireless broadband interference as identified by NOTAM (NOTAMs will be issued to state the specific areas where the radio altimeter is unreliable due to the presence of 5G C-Band wireless broadband interference):

- Performing approaches that require radio altimeter minimums for rotorcraft offshore operations. Barometric minimums must be used for these operations instead.
- Engaging hover autopilot modes that require radio altimeter data.
- Engaging Search and Rescue (SAR) autopilot modes that require radio altimeter data.
- Performing takeoffs and landings in accordance with any procedure (Category A, Category B, or by Performance Class in the Rotorcraft Flight Manual or Operations Specification) that requires the use of radio altimeter data.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Operational Safety Branch, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *AMOC@faa.gov.*

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

(i) Related Information

For more information about this AD, contact Dave Swartz, Continued Operational Safety Technical Advisor, COS Program Management Section, Operational Safety Branch, FAA, 222 W 7th Ave., M/S #14 Anchorage, AK 99513; phone: 817–222–5390; email: *operationalsafety@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued on December 7, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–26779 Filed 12–7–21; 2:00 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0573; Project Identifier 2018–CE–046–AD; Amendment 39–21822; AD 2021–24–01]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pilatus Aircraft Ltd. (Pilatus) Model PC–12/45, PC–12/47, and PC–12/47E airplanes with Supplemental Type Certificate (STC) SA00634DE installed. This AD was prompted by a report of strake attachment brackets and the fuselage frame failing at the upper most bracket attachment location. This AD requires inspecting the strake, attachment brackets, surrounding structure, and bolts and replacing components and repairing damage if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 13, 2022.

ADDRESSES: For service information identified in this final rule, contact Pilatus Business Aircraft Ltd., Customer Support Department, 12300 Pilatus Way, Broomfield, CO 80021; phone: (866) 721–2435; fax: (303) 465–9099; email: *productsupport@pilbal.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0573.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0573; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard R. Thomas, Aviation Safety Engineer, Denver ACO Branch, FAA, 26805 E 68th Avenue, Denver, CO 80249; phone: (303) 342–1080; fax: (303) 342–1088; email: *9-Denver-Aircraft-Cert@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Pilatus Aircraft Ltd. Model PC–12/45, PC–12/47, and PC–12/47E airplanes with STC SA00634DE installed. The NPRM published in the **Federal Register** on July 22, 2021 (86 FR 38613). The NPRM was prompted by a report of strake attachment brackets and the fuselage frame failing at the upper most bracket attachment location. In the NPRM, the FAA proposed to require inspecting the strake, attachment brackets, and bolts for movement and damage, both internal and external, and replacing components and repairing damage if necessary. The FAA is issuing this AD to prevent buffeting of the strakes. This condition, if not addressed, could result in airplane flutter and reduced lateral stability, which may lead to loss of control of the airplane.

Discussion of Final Airworthiness Directive

Comments

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

Differences Between the NPRM and the Final Rule

The FAA has clarified the wording of the required inspections in paragraph (g) of this AD. This is not a substantive change.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for the changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pilatus Service Bulletin PC–12 Series, Report Number 12–1700–64–0000, Revision B, dated August 10, 2018 (Pilatus Report 12–1700–64–0000B), which contains procedures for inspection of all fuselage strake attachment bolts and the surrounding structure. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Differences Between This AD and the Service Information

Pilatus Report 12–1700–64–0000B specifies a one-time inspection within 10 flight hours of issuance of the service bulletin and recommends repeat inspections without specifying an inspection interval. This AD requires repeating the inspection every 150 flight hours. Pilatus Report 12–1700–64–0000B specifies contacting Pilatus for further instructions. This AD requires using an FAA-approved repair method. Pilatus Report 12–1700–64–0000B applies to Pilatus PC–12 aircraft serial numbers 190 to 1575. This AD applies to all Pilatus Aircraft Ltd. Models PC–12/45, PC–12/47, and PC–12/47E airplanes, regardless of serial number, if STC SA00634DE is installed.

Interim Action

The FAA considers this AD an interim action. Pilatus is working on a modification with the intent of minimizing, if not eliminating, the buffeting of the strakes. Once this action is developed, approved, and available, the FAA may consider additional rulemaking.

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the strake assemblies.	1 work-hour × $85 per hour = $85 per inspection cycle.	Not applicable	$85 per inspection cycle	$2,550 per inspection cycle.

The extent of damage found during the proposed inspections may vary considerably from airplane to airplane. The FAA has no way of knowing how many airplanes may have damage or the extent of damage each airplane may have.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–24–01 Pilatus Aircraft Ltd.: Amendment 39–21822; Docket No. FAA–2021–0573; Project Identifier 2018–CE–046–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. (Pilatus) Model PC–12/45, PC–12/47, and PC–12/47E airplanes, all serial numbers, certificated in any category, with a Spectre Lift Platform System installed in accordance with Supplemental Type Certificate No. SA00634DE.

(d) Subject

Joint Aircraft System Component (JASC) Code 5350, Aerodynamic Faring.

(e) Unsafe Condition

This AD was prompted by a report of the strake attachment brackets and surrounding structure failing at the upper most bracket bolt hole. The FAA is issuing this AD to detect and address any looseness or damage to the strake, attachment brackets, or surrounding structure, and missing fasteners or loose bolts, which could result in airplane flutter and reduced lateral stability, which may lead to loss of control of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 10 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 150 hours TIS, inspect the fuselage strakes for movement (outside inspection), the strakes and their attachment brackets for loose and missing bolts and screws and structural deformation (inside and outside inspection), and the strake attachment brackets and surrounding structure for discoloration, deformation, cracks, and other structural damage (inside inspection) by following the Accomplishment Instructions—Aircraft, steps A through B.(3) and C.(1) through C.(5), in Pilatus Service Bulletin PC–12 Series, Report Number 12–1700–64–0000, Revision B, dated August 10, 2018.

(1) You must accomplish the inside fuselage inspection regardless of the results of the outside fuselage inspection.

(2) If any movement of the strakes, a loose or missing bolt or screw, discoloration, deformation, a crack, or other structural damage is found during any of the inspections, before further flight, repair using FAA-approved procedures.

(h) Special Flight Permit

A special flight permit may be issued to allow flying the airplane to a maintenance facility where repair of the strake assembly will be performed with the following operating limitations:

(1) Flight must be conducted under visual flight rules, daytime only; and

(2) The Spectre Lift Platform System, STC SA00634DE, must be retracted (not deployed) during the flight.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Richard R. Thomas, Aviation Safety Engineer, Denver ACO Branch, FAA, 26805 E. 68th Avenue, Denver, CO 80249; phone: (303) 342–1080; fax: (303) 342–1088; email: *9-Denver-Aircraft-Cert@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Pilatus Service Bulletin PC–12 Series, Report Number 12–1700–64–0000, Revision B, dated August 10, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pilatus Business Aircraft Ltd., Customer Support Department, 12300 Pilatus Way, Broomfield, CO 80021; phone: (866) 721–2435; fax: (303) 465–9099; email: *productsupport@pilbal.com.*

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

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

Issued on December 2, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–26544 Filed 12–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0783; Project Identifier 2019–SW–009–AD; Amendment 39–21825; AD 2021–24–04]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 505 helicopters. This AD was prompted by the determination that reducing the pressure altitude limitations for certain fuel types is necessary. This AD requires revising the existing Rotorcraft Flight Manual (RFM) for your helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of January 13, 2022.

ADDRESSES: For service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0783.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0783; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rao Edupuganti, Aerospace Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *rao.edupuganti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 505 helicopters. The NPRM published in the **Federal Register** on September 20, 2021 (86 FR 52109). In the NPRM, the FAA proposed to require revising the existing RFM for your helicopter. Incorporating the RFM revision may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. This is an exception to the FAA's standard maintenance regulations.

The NPRM was prompted by Canadian AD CF–2019–08, dated March 5, 2019 (Canadian AD CF–2019–08), issued by Transport Canada, which is the aviation authority for Canada, to correct an unsafe condition for Bell Helicopter Textron Canada Limited Model 505 helicopters serial numbers 65011 and subsequent. Transport Canada advises of the need to reduce the altitude limitations for Jet B and JP–4 wide-cut fuels following unsatisfactory performance of the engine at the original higher altitude limitations with these wide-cut fuels. This condition, if not addressed, could result in low fuel pressure, engine flame-out, or engine power interruption (a change in any engine performance parameter—including but not limited to gas generator speed, power turbine speed, main gas temperature, or output torque—outside its normal limits for the prevailing operating conditions).

Accordingly, Canadian AD CF–2019–08 requires revising the RFM to reflect the reduced altitude operating limitations for Jet B and JP–4 wide-cut fuels.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Figure 1–6. Fuel Operating Envelope (Sheet 1 of 1) of Bell 505 Rotorcraft Flight Manual BHT–505–FM–1, Revision 3, dated July 25, 2018, which specifies limitations, normal and emergency procedures, performance data, weight and balance information, and provides a list of approved optional equipment supplements. This revision of the service information includes an updated figure of the fuel operating envelope showing the reduced pressure altitude limitations for Jet B and JP–4 fuels.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and the Transport Canada AD

Canadian AD CF–2019–08 requires updating the RFM to Bell 505 RFM BHT–505–FM–1 Revision 3 or later revisions approved by Transport Canada, whereas this AD requires revising the Limitations Section of the RFM for your helicopter by replacing the existing Figure 1–6. with Figure 1–6. Fuel Operating Envelope (Sheet 1 of 1) of Bell 505 RFM BHT–505–FM–1, Revision 3, dated July 25, 2018.

Costs of Compliance

The FAA estimates that this AD affects 73 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Revising the existing RFM for your helicopter would take about 0.5 work-hour for an estimated cost of $43 per helicopter or $3,139 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–24–04 Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited): Amendment 39–21825; Docket No. FAA–2021–0783; Project Identifier 2019–SW–009–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Helicopter Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 505 helicopters having serial number 65011 and subsequent, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7300, Engine fuel and control.

(e) Unsafe Condition

This AD was prompted by the determination that reducing the pressure altitude limitations for certain fuel types is necessary. The FAA is issuing this AD to address unsatisfactory flight performance of the engine above pressure altitude limitations for Jet B and JP–4 fuels. The unsafe condition, if not addressed, could result in low fuel pressure, engine flame-out, or engine power interruption.

(f) Compliance

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

(g) Required Actions

Within 30 calendar days after the effective date of this AD, revise the Limitations Section of the existing Rotorcraft Flight Manual (RFM) for your helicopter by replacing Figure 1–6. with Figure 1–6. Fuel Operating Envelope (Sheet 1 of 1) of Bell 505 Rotorcraft Flight Manual BHT–505–FM–1, Revision 3, dated July 25, 2018 (BHT–505–FM–1 Revision 3). Using a different document with information identical to that in Figure 1–6. Fuel Operating Envelope (Sheet 1 of 1) of BHT–505–FM–1 Revision 3 is acceptable for compliance with the requirements of this AD. The action required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Rao Edupuganti, Aerospace Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *rao.edupuganti@faa.gov.*

(2) The subject of this AD is addressed in Transport Canada AD CF–2019–08, dated March 5, 2019. You may view the Transport Canada AD at *https://www.regulations.gov* in Docket No. FAA–2021–0783.

(j) Material Incorporated by Reference

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

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

(i) Figure 1–6. Fuel Operating Envelope (Sheet 1 of 1) of Bell 505 Rotorcraft Flight Manual BHT–505–FM–1, Revision 3, dated July 25, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on November 12, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–26605 Filed 12–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0688; Project Identifier 2019–SW–025–AD; Amendment 39–21781; AD 2021–22–08]

RIN 2120–AA64

Airworthiness Directives; Hélicoptères Guimbal Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hélicoptères Guimbal (HG) Model Cabri G2 helicopters. This AD was prompted by the determination that certain parts need life limits and certification maintenance requirement (CMR) tasks. This AD requires establishing life limits and CMR tasks for various parts and removing any parts from service that have reached or exceeded their life limits. Depending on the results of the CMR tasks, this AD requires corrective action. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 13, 2022.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of January 13, 2022.

ADDRESSES: For service information identified in this final rule, contact Hélicoptères Guimbal, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *support@guimbal.com;* or at *https://www.guimbal.com.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0688.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0688; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Hélicoptères Guimbal (HG) Model Cabri G2 helicopters. The NPRM published in the **Federal Register** on August 23, 2021 (86 FR 47038). In the NPRM, the FAA proposed to require before further flight, removing from service certain part-numbered cooling fan front flanges and engine pulley ball bearings that have accumulated or exceeded their life limit. The NPRM also proposed to require establishing recurring CMR tasks for certain part-numbered cooling fan front flanges. Depending on the results of the CMR tasks, the NPRM proposed to require corrective action. Additionally, the NPRM proposed to require painting certain part-numbered tail booms with glossy white paint.

The NPRM was prompted by a series of EASA ADs beginning with EASA AD 2016–0032, dated February 24, 2016 (EASA AD 2016–0032), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for HG Model Cabri G2 helicopters. EASA AD 2016–0032 states HG has revised the airworthiness limitations and maintenance tasks specified in the existing maintenance manual. EASA further advised the revisions include new and more restrictive applicable life limits and compliance times for applicable tasks. Accordingly, EASA 2016–0032 required replacing each affected part before exceeding its life limit, accomplishing all applicable maintenance tasks within the defined intervals as described in revised maintenance manual and if discrepancies were found accomplishing the corrective actions in accordance with the applicable maintenance instructions or contacting HG. EASA AD 2016–0032 also required revising the existing Aircraft Maintenance Program (AMP) for your helicopter by incorporating the actions specified in the revised maintenance. After EASA issued EASA AD 2016–0032, HG again revised the airworthiness limitations and maintenance tasks.

Accordingly, EASA superseded EASA AD 2016–0032 with EASA AD 2019–0025, dated February 4, 2019 (EASA AD 2019–0025). EASA advises new and more restrictive life limits have been established for cooling fan part number (P/N) G52–00–001, and P/N G52–00–002, which have been identified as mandatory for continued airworthiness in Hélicoptères Guimbal Cabri G2 Maintenance Manual (MM) No. J70–002 Issue 06, dated December 6, 2018, Section C, Airworthiness Limitations (the ALS). In addition to the new life limits, EASA advises of new and more restrictive inspection intervals identified in the ALS for cooling fan P/N G52–00–001 with a certain mounted cooling fan front flange P/N G52–02–200, or P/N G52–02–201. EASA further advises that the ALS revised the tail structure paint to include certain part-numbered tail booms and an additional figure. This condition, if not addressed, could result in parts remaining in service beyond their fatigue life and failure of a part, which could result in loss of control of the helicopter.

Accordingly, EASA AD 2019–0025 retains the requirements of EASA AD 2016–0032 and requires replacing each affected part before exceeding its life limit, accomplishing all applicable maintenance tasks within the defined intervals as described in the ALS, and if discrepancies are found accomplishing the corrective actions in accordance with the applicable maintenance instructions or contacting HG. EASA AD 2019–0025 also requires revising the tail structure paint scheme to include certain part-numbered tail booms and an additional figure. EASA AD 2019–0025 requires revising the existing AMP for your helicopter by incorporating the actions specified in the ALS.

Comments

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

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. Changes include clarifying the name of and the specific portions of Guimbal France Hélicoptères Guimbal Cabri G2 Maintenance Manual and Instructions for Continued Airworthiness, J70–002—Issue 06, dated December 6, 2018 (MM J70–002 Issue 06) that are required to accomplish this final rule. MM J70–002 Issue 06 also refers to a flashlight as a torchlight; accordingly, changes have been made in this final rule to clarify that where MM J70–002 Issue 06 specifies to use a torchlight, to use a flashlight instead. This final rule also removes the requirements of accomplishing sub section 52–A–10 Cooling Fan Inspection, paragraph d), of MM J70–002 Issue 06 because it is unnecessary, this final rule already provides requirements pertaining to what to do if there is a crack.

Related Service Information Under 1 CFR Part 51

The FAA reviewed page C–6 of Section C, Airworthiness Limitations, and page E–5–53 of Section E, Maintenance Instructions, of MM J70–002 Issue 06. This service information specifies airworthiness life limits, inspection intervals, and CMR requirements for parts installed on Cabri G2 helicopters. MM J70–002 Issue 06 also establishes life limits for certain part-numbered cooling fan front flanges, and engine pulley ball bearings and CMR requirements for certain cooling fan front flanges.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and EASA 2019–0025

EASA AD 2019–0025 requires contacting Hélicoptères Guimbal for corrective actions when a discrepancy is

found, whereas this AD requires removing the part from service. EASA AD 2019–0025 requires accomplishing the actions specified in the ALS, whereas this AD requires establishing a life limit for certain part-numbered cooling fan front flanges and certain part-numbered engine pulley ball bearings and removing any part from service accordingly instead. EASA AD 2019–0025 requires revising the AMP with the actions specified in the ALS, whereas this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 32 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Replacing a cooling fan front flange takes about 16 work-hours and parts cost about $4,500 for an estimated cost of $5,860 per helicopter and $187,520 for the U.S. fleet, per replacement cycle.

Replacing an engine pulley ball bearing takes about 12 work-hours and parts cost about $250 for an estimated cost of $1,270 per helicopter and $40,640 for the U.S. fleet, per replacement cycle.

The FAA has no way of determining the estimated costs to do allowable repairs based on the results of the CMR tasks. If required, replacing a cracked cooling fan front flange takes about 16 work-hours and parts cost about $4,500 for an estimated cost of $5,860.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–22–08 Hélicoptères Guimbal: Amendment 39–21781; Docket No. FAA–2021–0688; Project Identifier 2019–SW–025–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Hélicoptères Guimbal (HG) Model Cabri G2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7100, Powerplant System.

(e) Unsafe Condition

This AD was prompted by a notification of certain parts remaining in service beyond their fatigue life or beyond maintenance intervals required by the certification maintenance requirements (CMRs) of the Instructions for Continued Airworthiness. The FAA is issuing this AD to prevent failure of a part, which could result in loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD, remove from service any part that has reached or exceeded its life limit, as specified in paragraphs (g)(1)(i) through (iii) of this AD, and thereafter remove from service any part on or before each part reaches its life limit:

(i) The life limit for cooling fan front flange part number (P/N) G52–02–200 mounted on pulley (12 screws) P/N G52–10–100 or G52–10–101; and cooling fan front flange P/N G52–02–201 mounted or having been mounted on pulley (12 screws) P/N G52–10–100 or G52–10–101, installed on cooling fan P/N G52–00–001 or G52–00–002; is 2,200 total hours time-in-service (TIS).

(ii) The life limit for cooling fan front flange P/N G52–02–201 mounted on pulley (24 screws) P/N G52–10–102 and having never been mounted on pulley (12 screws) P/N G52–10–100 or G52–10–101, installed on cooling fan P/N G52–00–001 or G52–00–002, is 4,400 total hours TIS.

(iii) The life limit for engine pulley ball bearing P/N HG61–0790 and HG61–1944, installed on engine pulley assembly P/N G51–14–1XX, is 2,200 total hours TIS.

(2) Perform the following CMR tasks as follows:

(i) Cooling fan front flange P/N G52–02–200 mounted on pulley (12 screws) P/N G52–10–100 or G52–10–101; and cooling fan front flange P/N G52–02–201 mounted or having been mounted on pulley (12 screws) P/N G52–10–100 or G52–10–101, installed on cooling fan P/N G52–00–001, and with 500 or more total hours TIS since new as of the effective date of this AD: Within 5 hours TIS after the effective date of this AD and thereafter at intervals not to exceed 50 hours TIS, or 70 engine start-stop cycles, whichever occurs first, inspect the cooling fan front flange for a crack in accordance with Section E, Maintenance Instructions, sub section 52–A–10 Cooling Fan Inspection, paragraph c), on page E–5–53, of Guimbal France Hélicoptères Guimbal Cabri G2 Maintenance Manual (MM) and Instructions for Continued Airworthiness, J70–002—Issue 06, dated December 6, 2018 (MM J70–002 Issue 06), except where MM J70–002 Issue 06 specifies to use a torchlight, use a flashlight. If any crack is found, before further flight, remove the cooling fan front flange from service.

(ii) Cooling fan front flange P/N G52–02–200 mounted on pulley (12 screws) P/N G52–10–100 or G52–10–101; and cooling fan front flange P/N G52–02–201 mounted or having been mounted on pulley (12 screws) P/N G52–10–100 or G52–10–101, installed on cooling fan P/N G52–00–001, and with less than 500 total hours TIS since new as of the effective date of this AD: Before

accumulating 500 total hours TIS since new and thereafter at intervals not to exceed 50 hours TIS, or 70 engine start-stop cycles, whichever occurs first, inspect the cooling fan front flange for a crack in accordance with Section E, Maintenance Instructions, sub section 52–A–10 Cooling Fan Inspection, paragraph c), on page E–5–53, of MM J70–002 Issue 06, except where MM J70–002 Issue 06 specifies to use a torchlight, use a flashlight. If any crack is found, before further flight, remove the cooling fan front flange from service.

(iii) Cooling fan front flange P/N G52–02–201 mounted on pulley (24 screws) P/N G52–10–102 and having never been mounted on pulley (12 screws) P/N G52–10–100 or G52–10–101, installed on cooling fan P/N G52–00–002: Before accumulating 500 total hours TIS since new and thereafter at intervals not to exceed 100 hours TIS, inspect the cooling fan front flange for a crack in accordance with Section E, Maintenance Instructions, sub section 52–A–10 Cooling Fan Inspection, paragraph c), on page E–5–53, of MM J70–002 Issue 06, except where MM J70–002 Issue 06 specifies to use a torchlight, use a flashlight. If any crack is found, before further flight, remove the cooling fan front flange from service.

(iv) For helicopters with tail boom P/N G65–00–101, G65–00–102 or G65–00–103 and subsequent installed: Before further flight after the effective date of this AD, paint or verify the tail boom upper surface in accordance with Section C, Airworthiness Limitations, sub section C–23 Tail Structure Paint, on page C–6, of MM J70–002 Issue 06, as applicable to your helicopter.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g)(2)(i) through (iii) of this AD, if those actions were performed before the effective date of this AD using Section E, Maintenance Instructions, sub section 52–A–10 Cooling Fan Inspection, paragraphs (c) and (d), of Guimbal France Hélicoptères Guimbal Cabri G2 MM and Instructions for Continued Airworthiness, J70–002 Issue—05.1, dated October 30, 2015.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the contact information specified in paragraphs (k)(3) and (4) of this AD.

(3) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency (EASA) AD 2019–0025, dated February 4, 2019. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–0688.

(k) Material Incorporated by Reference

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

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

(i) Page C–6 of Section C, Airworthiness Limitations, of Guimbal France Hélicoptères Guimbal Cabri G2 Maintenance Manual and Instructions for Continued Airworthiness, J70–002—Issue 06, dated December 6, 2018.

(ii) Page E–5–53 of Section E, Maintenance Instructions, of Guimbal France Hélicoptères Guimbal Cabri G2 Maintenance Manual and Instructions for Continued Airworthiness, J70–002—Issue 06, dated December 6, 2018.

(3) For service information identified in this AD, contact Hélicoptères Guimbal, 1070, rue du Lieutenant Parayre, Aérodrome d'Aix-en-Provence, 13290 Les Milles, France; telephone 33–04–42–39–10–88; email *support@guimbal.com;* or at *https://www.guimbal.com.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on October 14, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–26543 Filed 12–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 705

[Docket No. 211115–0229]

RIN 0694–AH55

Removal of Certain General Approved Exclusions (GAEs) Under the Section 232 Steel and Aluminum Tariff Exclusions Process

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Interim final rule.

SUMMARY: On December 14, 2020, the Department of Commerce published an interim final rule (the ''December 14 rule'') that revised aspects of the process for requesting exclusions from the duties and quantitative limitations on imports of aluminum and steel discussed in three previous Department of Commerce (''Commerce'') interim final rules implementing the exclusion process authorized by the President under Section 232 of the Trade Expansion Act of 1962, as amended, as well as a May 26, 2020 notice of inquiry. The December 14 rule included adding 123 General Approved Exclusions (GAEs) to the regulations. Subsequently, based on Commerce's review of the public comments received in response to the December 14 rule and additional analysis conducted by Commerce on the Section 232 exclusion request submissions, Commerce determined that a subset of the GAEs added in the December 14 rule no longer meets the criteria for inclusion as a GAE and should therefore be removed. Commerce is removing these GAEs in this interim final rule to ensure only those GAEs that meet the stated criteria from the December 14 rule will continue to be included as eligible GAEs. This interim final rule removes thirty of the GAEs that were added to the regulations in the December 14 rule, consisting of twenty-six GAEs for steel and four GAEs for aluminum. As a conforming change to a recent U.S. International Trade Commission (ITC) decision, this rule also removes one additional steel GAE. Lastly, this interim final rule adds a note to both GAE supplements to address future changes to the Harmonized Tariff Schedule of the United States (HTSUS).

DATES: This interim final rule is effective December 27, 2021.

FOR FURTHER INFORMATION CONTACT: For questions regarding this interim final rule, contact Kevin Coyne at 202–482–3203 or via email *Kevin.Coyne@bis.doc.gov,* or email *Steel232@bis.doc.gov* regarding provisions in this rule specific to steel exclusion requests and *Aluminum232@bis.doc.gov* regarding provisions in this rule specific to aluminum exclusion requests.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2018, Proclamations 9704 and 9705 were issued imposing duties on imports of aluminum and steel, respectively. The Proclamations also authorized the Secretary of Commerce (''the Secretary'') to grant exclusions from the duties if the Secretary determines the steel or aluminum article for which the exclusion is requested is not ''produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality'' or should be excluded ''based upon specific national security considerations,'' and provided authority for the Secretary to issue procedures for exclusion requests. On April 30, 2018, Proclamations 9739 and 9740, and on May 31, 2018, Proclamations 9758 and 9759, set quantitative limitations on the import of steel and aluminum from certain countries in lieu of the duties. On August 29, 2018, in Proclamations 9776 and 9777, the Secretary was authorized to grant exclusions from quantitative limitations based on the same standards applicable to exclusions from the tariffs.

Implementing and Improving the Section 232 Exclusions Process

Since March 19, 2018, Commerce has published a series of four interim final rules that established and made various improvements to the Section 232 exclusions process.

On March 19, 2018, Commerce first issued an interim final rule, *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum* (83 FR 12106) (the ''March 19 rule''), laying out procedures for the Section 232 exclusions process.

On September 11, 2018, Commerce issued a second interim final rule, *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (83 FR 46026) (the ''September 11 rule''), that revised the two supplements added by the March 19 rule with improvements designed to further ensure a transparent, fair, and efficient exclusion and objection process.

On June 10, 2019, Commerce issued a third interim final rule, *Implementation of New Commerce Section 232 Exclusions Portal* (84 FR 26751) (the ''June 10 rule''), that revised the two supplements added by the March 19 and September 11 rules to grant the public the ability to submit new exclusion requests through the Section 232 Exclusions Portal while still allowing the opportunity for public comment on the portal.

On May 26, 2020, Commerce issued a notice of inquiry with request for comment, *Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas* (85 FR 31441) (the ''May 26 notice''), that sought public comment on the appropriateness of the information requested and considered in applying the exclusion criteria, and the efficiency and transparency of the process employed.

On December 14, 2020, Commerce issued a fourth interim final rule, *Implementation of New Commerce Section 232 Exclusions Portal* (85 FR 81060) (the ''December 14 rule''), that made additional revisions to the Section 232 exclusion process and added General Approved Exclusions (GAEs) to supplements no. 2 and no. 3 to part 705.

Adoption of General Approved Exclusions

As noted above, the December 14 rule added new supplements, no. 2 and no. 3, for identifying GAEs for steel and aluminum articles under the Section 232 exclusions process and the first approved tranche of GAEs for steel and aluminum articles. GAEs addressed a long-standing request from exclusion requesters to create a more efficient process to approve certain exclusions where Commerce has determined that: (1) No objections will be received; and (2) it is warranted to approve an exclusion for all importers to use.

Specifically, the December 14 rule added a new Supplement No. 2 to Part 705—General Approved Exclusions (GAEs) for Steel Articles Under the Section 232 Exclusions Process, and a new Supplement No. 3 to Part 705—General Approved Exclusions (GAEs) for Aluminum Articles under the Section 232 Exclusions Process. These two supplements identify the steel and aluminum articles that have been approved for import under a GAE. The December 14 rule added 108 GAEs for steel articles under supplement no. 2 to part 705 and 15 GAEs for aluminum articles under supplement no. 3 to part 705. Each GAE is identified under the GAE identifier column, *e.g.,* GAE.1.S: 7304592030 (for the first approved GAE for steel) or GAE.1.A: 7609000000 (for the first approved GAE for aluminum).

The Secretary, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials, as appropriate, makes the determinations that certain aluminum and steel articles may be authorized under a GAE consistent with the objectives of the Section 232 exclusions process as outlined in supplement no. 1 to part 705.

The GAEs described in these supplements may be used by any importer. The two supplements specify that, in order to use a GAE, the importer must reference the GAE identifier in the Automated Commercial Environment (ACE) system that corresponds to the steel or aluminum articles being imported. GAEs do not include quantity limits. The effective date for each GAE will be fifteen calendar days after the date of publication of a **Federal Register** notice either adding or revising a specific GAE identifier in supplements no. 2 or no. 3 to this part. There will be no retroactive relief for GAEs. The December 14 rule also specified that relief is only available to steel or aluminum articles that are entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of a GAE included in supplements no. 2 or no. 3 to part 705.

The December 14 rule specified that these GAEs are indefinite in length, but Commerce may at any time issue a **Federal Register** notice removing, revising, or adding to an existing GAE in either of the two supplements as warranted to align with the objectives of the Section 232 exclusions process as described in supplement no. 1 to part 705. As described below, Commerce is making such a revision with the publication of today's interim final rule by removing 30 of the GAEs. Commerce may periodically publish notices of inquiry in the **Federal Register** soliciting public comments on potential removals, revisions, or additions to this supplement.

Why is Commerce publishing this interim final rule?

Commerce is publishing this interim final rule to remove a subset of GAEs (26 GAEs for steel and 4 GAEs for aluminum) added in the December 14 rule after public comments on the December 14 rule and subsequent Commerce analysis of data in the Section 232 Exclusions Portal identified these HTSUS codes as not meeting the criteria for inclusion as a GAE. These cases include HTSUS codes with exclusion requests that recently received objections and/or denials in the Section 232 Exclusions Portal. Commerce is removing these GAEs in this interim final rule to ensure that only those GAEs that meet the stated criteria from the December 14 rule will continue to be included as eligible GAEs.

What is the key change included in this interim final rule?

This interim final rule is being published to make the following key change to the Section 232 exclusions process: As described above, the December 14 rule included adding 123 GAEs. The addition of GAEs improved the efficiency and effectiveness of the Section 232 exclusions process for certain steel and aluminum articles under select HTSUS codes that had not received objections from domestic industry. Commerce determined that it could authorize imports under GAEs for these specified articles as defined by HTSUS codes for all importers rather than requiring each importer to submit an exclusion request.

Subsequently, based on Commerce's review of the public comments received in response to the December 14 rule and additional analysis conducted by Commerce of Section 232 submissions, Commerce determined that a subset of the GAEs added in the December 14 rule do not meet the criteria for inclusion as a GAE and should therefore be removed. Commerce is removing these GAEs in today's rule to ensure that only those GAEs that meet the stated criteria from the December 14 rule will continue to be included as eligible GAEs. This interim final rule removes 30 of the GAEs that were added to the regulations in the December 14 rule, consisting of 26 GAEs for steel (''GAE.3.S: 7220900060,'' ''GAE.7.S: 7227901060,'' ''GAE.14.S: 7215500018,'' ''GAE.16.S: 7228501040,'' ''GAE.23.S: 7220206010,'' ''GAE.27.S: 7219320020,'' ''GAE.33.S: 7304515005,'' ''GAE.34.S: 7219330025,'' ''GAE.35.S: 7217901000,'' ''GAE.37.S: 7217108030,'' ''GAE.38.S: 7212200000,'' ''GAE.39.S: 7217204560,'' ''GAE.52.S: 7219220040,'' ''GAE.53.S: 7219320038,'' ''GAE.54.S: 7219320045,'' ''GAE.55.S: 7219350005,'' ''GAE.56.S: 7219320036,'' ''GAE.60.S: 7225501110,'' ''GAE.68.S: 7302101015,'' ''GAE.71.S: 7217304541,'' ''GAE.75.S: 7219210005,'' ''GAE.76.S: 7304293160,'' ''GAE.78.S: 7216400010,'' ''GAE.87.S: 7304293180,'' ''GAE.92.S: 7208390015,'' and ''GAE.98.S: 7229200015'') and 4 GAEs for aluminum (''GAE.2.A: 7607205000,'' ''GAE.11.A: 7616995170,'' ''GAE.14.A: 7601209095,'' and ''GAE.15.A: 7616995160''). Because these GAEs do not meet the established criteria, Commerce is publishing this interim final rule to remove these thirty GAEs. This interim final rule makes no additional changes to the other 93 GAEs that will continue to remain in supplements no. 2 and no. 3. This revision further ensures the Section 232 exclusions process is consistent with the rationale for the import restrictions—protecting U.S. national security—while increasing the efficiency of the exclusion process.

Public Comments and BIS Responses

The public comment period on the December 14 rule closed on February 12, 2021. BIS received thirty-five public comments on the interim final rule.

GAEs That Received Objections and/or Denials

Comment (a)(1): GAEs did not follow the criteria stated in the December 14 rule because some GAE HTSUS codes received objections and/or denials. Several comments referenced the criteria Commerce included in the December 14 rule detailing why certain HTSUS codes were selected for GAEs. Specifically, these commenters noted that according to the Department, the ''GAEs address a long-standing request from public comments of exclusion requesters to create a more efficient process to approve certain exclusions for use by all importers where Commerce has determined that no objections will be received and where it is warranted to approve an exclusion for all importers to use.'' These commenters stated that this is not the case because the GAE list from the December 14 rule included several HTSUS codes for which domestic producers submitted an objection, covering more than a dozen GAEs. These same commenters noted that the GAE list also included several HTSUS codes for which the Department had denied exclusion requests. For these reasons, these commenters believe the Department's GAE list is, therefore, flawed.

BIS response: Commerce will continue to apply the criteria that were included in the December 14 rule. Commerce agrees that a subset of GAEs included in the December 14 rule did not meet the stated criteria for inclusion as a GAE. The criteria in the December 14 rule need to be followed to ensure that GAEs can be implemented in a way that improves the efficiency and effectiveness of the Section 232 exclusions process without undermining the effectiveness of the tariffs and the national security objectives that the tariffs are attempting to address. Commerce will act to remove or revise GAE entries once Commerce becomes aware of GAEs that do not meet the stated criteria for inclusion.

Comment (a)(2): Data from Section 232 Exclusions Portal demonstrating objections were received. Commenters opposed to the GAEs highlighted that a review of the Section 232 Exclusions Portal shows that over 70 exclusion requests involving HTSUS provisions included on supplements no. 2 and no. 3 in the December 14 rule had objections filed and, in a number of cases, the requests were denied by Commerce. Commenters noted that despite these findings the HTSUS codes were included in the December 14 rule as eligible GAEs. Some of these commenters included detailed screen shots or other information taken from the Section 232 Exclusions Portal to support their comments.

BIS response: Commerce agrees with these commenters that the data in the Section 232 Exclusions Portal indicates that certain HTSUS codes do not meet the criteria for inclusion on the list of GAEs. As described below in greater detail, the difference between the stated criteria in the December 14 rule and the published list of GAEs occurred due to activity in the Section 232 Exclusions Portal which occurred after the baseline date used by Commerce for identifying which HTSUS codes had not received objections and/or denials and thus were eligible for inclusion as GAEs. As described below, Commerce has made internal process changes to ensure that the rulemaking process for all future rules adding new GAEs will include review immediately prior to publication for any new rule adding additional GAEs.

Comment (a)(3): Including steel or aluminum articles in GAEs that had received objections and/or denials is unfair and contrary to the objectives of the Section 232 process. Some commenters indicated that it is unfair to companies who filed objections, after which the related exclusion requests were denied, to allow the same steel or aluminum articles to be eligible for GAEs. These commenters were also

concerned that not only does granting GAEs for such steel and aluminum articles allow the company who submitted the exclusion request to import the steel or aluminum product tariff-free, it also opens the market to all companies who import that aluminum or steel product.

BIS response: Commerce agrees with these concerns and is addressing them in this interim final rule.

Changes Made in This Interim Final Rule To Improve the Section 232 Exclusions Process

BIS is suspending 30 out of the 123 GAEs that became effective on December 29, 2020. This interim final rule implements these 30 suspensions by removing these GAEs from supplements no. 2 and no. 3 to part 705. Commerce made this determination based on internal review of exclusions data which indicated that the articles specified in these 30 GAEs require further analysis by the Department. Based on the results of this analysis, Commerce may reissue these GAEs in whole or in part with subsequent interim final rules. As noted in the December 14 rule, Commerce may periodically publish notices of inquiry in the **Federal Register** soliciting public comments on potential removals, revisions, or additions to the two supplements for GAEs. Based on Commerce's experience with the initial tranche of GAEs, Commerce will likely publish notices prior to adding additional GAEs to help better inform Commerce decisions on what HTSUS codes or specific products may warrant inclusion.

The steel and aluminum articles specified by these 30 GAEs (as defined by their HTSUS Classifications) will revert to the duties and treatment previously established under Presidential Proclamations 9704 and 9705 as well as subsequent Proclamations.

Commerce identified 26 steel GAEs and 4 aluminum GAEs for removal in this interim final rule. Commerce identified these GAEs based on review of its internal exclusions data in light of public comments received in response to the December 14 rule highlighting, as noted above, that articles under certain HTSUS codes were included as GAEs despite previously receiving objections and/or denials in the Section 232 Exclusions Portal.

Commerce issued the set of 123 GAEs based on its analysis of all of the exclusion requests received through the Section 232 exclusions process since its implementation on March 19, 2018. BIS based the GAEs on the HTSUS codes that had never received an objection during the first thirty months of the Section 232 exclusions process, on the basis that the lack of objections indicated either an unwillingness or inability of domestic objectors to manufacture the articles classified under the HTSUS codes. Commerce conducted its analysis using data, drawn on a baseline date of September 12, 2020, from the Section 232 Exclusions Portal. The baseline date provided for thirty months of Section 232 submissions data covering nearly 240,000 of Section 232 submissions. Based on the quantity and timespan of the data, Commerce concluded that all 123 HTSUS codes could be implemented as GAEs.

Since publishing the December 14 rule, Commerce has become aware that exclusion requests for steel and aluminum articles specified by 29 of the GAEs removed by this interim final rule—25 steel GAEs and 4 aluminum GAEs—received objections after September 12, 2020. In some but not all cases, the Department denied these exclusion requests. BIS is removing these 29 GAEs to conduct further analysis with updated data from the Section 232 Exclusions Portal. BIS, based on the results of this analysis, may reissue these GAEs in whole or part in subsequent rules. Commerce has also made internal process changes specific to the timing of data runs to ensure that the baseline date used for determining new GAEs is as close as possible to when any subsequent rule that adds or revises the GAEs is published. These internal process changes will allow Commerce, as needed, to remove GAEs from a rule prior to publication if it is determined that one or more of the GAEs (or the HTSUS codes comprising the GAEs) have received objections and/or denials.

As a conforming change to a recent U.S. International Trade Commission (ITC) decision, this rule also removes one additional steel GAE. Specifically, the ITC 484(f) Committee retired HTSUS Classification 7208390015 (covered by GAE.92.S) effective July 1, 2021. This rule removes GAE.92.S from the GAE List.

In order to more efficiently address future ITC changes to the Harmonized Tariff Schedule of the United States, Commerce is adding a note to supplements no. 2 and no. 3 to specify how GAEs will be treated when the ITC makes certain changes to the HTSUS Classifications as part of their routine updates to the HTSUS with revisions (including re-categorizations), modifications, and removals to/from the HTSUS Classifications. The note specifies that the list of the HTSUS Classifications referenced in supplements no. 2 and no. 3 of GAEs is drawn from the Harmonized Tariff Schedule of the United States published on the ITC website and ITC Change Records for HTSUS Classifications (compiled at *https://hts.usitc.gov/*) and will be amended when the ITC publishes subsequent Change Records. The note added to supplements no. 2 and no. 3 specifies that if there are any discrepancies between the list of the HTSUS Classifications in the GAE List and the HTSUS Classifications identified by the ITC in the Harmonized Tariff Schedule of the United States and the associated Change Records, the ITC's list of HTSUS Classifications shall be controlling. The new note this rule adds to supplements no. 2 and no. 3 specifies that if an HTSUS Classification defining a GAE is split or otherwise modified by the ITC in the HTSUS, Commerce will extend the GAE to the newly created HTSUS Classification(s), so long as the new 'child' HTSUS Classification(s) contain products falling entirely within the scope of the old 'parent' HTSUS Classification. The new note added to supplements no. 2 and no. 3 also specifies that these types of 'inherited' GAEs will be effective from the effective date of the change to the HTSUS, even prior to a Commerce rule being published to add the new HTSUS number to one of the GAE lists under supplements no. 2 or 3. This note being added to supplements no. 2 and no. 3 will allow Commerce to instruct CBP to retain the GAE in the event of an HTSUS classification being modified even before Commerce is able to update and publish a revised GAE list under supplements no. 2 or no. 3. During the period after the effective date of the change to the HTSUS and before the GAE is updated, ACE will reject entries claiming the exclusion with the new HTSUS number and importers will have to make entry without the exclusion. In order for importers to preserve their rights, if any, to the exclusion with the new HTSUS number during this period, the note also advises importers to seek extensions of liquidation of the affected entries with CBP until Commerce is able to update and publish a revised GAE list under supplements no. 2 or no. 3.

Commerce has determined that the internal process changes implemented will address these issues that occurred during the selection of the GAEs included in the December 14 rule. Additionally, as stated in the December 14 rule and above, Commerce may publish notices requesting comments on additions, removals, or modifications of

GAEs. Commerce will make changes to the GAEs whenever it is warranted to ensure that U.S. national security interests are protected. The adoption of the GAEs was an important step for users of steel and aluminum articles needed for national security applications as has been noted by many commenters on past Section 232 interim final rules. However, Commerce will evaluate all changes to the Section 232 program in light of whether they are improving the effectiveness of the program and whether or not the changes are consistent with the objectives of the Section 232 program.

BIS does not anticipate that suspension of these 30 GAEs will substantially increase the total volume of submitted exclusion requests in the Section 232 Exclusions Portal. BIS has received 2,109 exclusion requests from 109 requestors for articles covered by these 30 GAEs in the Section 232 Exclusions Portal over an approximate two-year period. BIS estimates that the removal of these 30 GAEs will affect roughly 100 requestors who submit exclusion requests and will lead to the submission of an additional 1,100 exclusion requests per year in the Section 232 Exclusions Portal.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Pursuant to Proclamations 9704 and 9705 of March 8, 2018, and Proclamations 9776 and 9777 of August 29, 2018, the establishment of procedures for an exclusions process under each Proclamation shall be published in the **Federal Register**.

2. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

This final regulation involves three collections currently approved by OMB with the following control numbers:

- Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694–0139).
- Objections from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694–0138).
- Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions from and Objections to the Section 232 Adjustments for Steel and Aluminum (OMB control number 0694–0141).

This rule is expected to increase the burden hours for one of the collections associated with this rule, OMB control number 0694–0139. This increase is expected because of the removal of 26 GAEs for steel and 4 GAEs for aluminum, which is expected to result in an increase of 1,100 exclusion request submissions per year. These removals are estimated to result in a twenty percent reduction in the burden and costs savings described in the December 14 rule. These GAE removals are expected to be an increase in 1,100 burden hours for a total cost increase of 162,800 dollars to the public. There is also expected to be an increase in 6,600 burden hours for a total cost increase of 257,000 dollars to the U.S. Government. As Commerce asserted in the December 14 rule that the steel and aluminum articles identified as being eligible for GAEs, including those being removed in today's rule, had not received any objections, the addition of those new GAEs was not estimated to result in a decrease in the number of objections, rebuttals, or surrebuttals received by BIS. As described elsewhere in this rule, the GAEs removed in today's interim final rule did receive objections and/or denials and therefore warrant removal at this time. Because the December 14 rule did not make any adjustments to the collections for objections, rebuttals, or surrebuttals, the removal of these GAEs is estimated to result in no change in the burden associated with the other two collections. Commerce Department intends to provide separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). As explained in the reports submitted by the Secretary to the President, steel and aluminum are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security of the United States, and therefore the President is implementing these remedial actions (as described Proclamations 9704 and 9705 of March 8, 2018) to protect U.S. national security interests. That implementation includes the creation of an effective process by which affected domestic parties can obtain exclusion requests ''based upon specific national security considerations.'' Commerce started this process with the publication of the March 19 rule and refined the process with the publication of the September 11, June 10, and December 14 rules and is continuing the process with the publication of today's interim final rule. The revisions to the exclusion request process are informed by the comments received in response to the December 14 rule and Commerce's experience with managing the Section 232 exclusions process.

In the December 14 rule, Commerce took what many commenters characterized as a significant step to improve the efficiency and effectiveness of the Section 232 exclusions process by adding General Approved Exclusions (GAEs). The GAEs are an effort to improve the efficiency and effectiveness of the Section 232 exclusions process while not undermining the national security objectives of the tariffs by adopting a more efficient authorization mechanism for certain steel and aluminum articles that had not received objections over an extended period of time and with many exclusion requests being submitted for the specified articles. Many commenters on the earlier Section 232 rules requested that Commerce create a type of general approval that could be used by any importer. These commenters on the earlier Section 232 rules, as well as on December 14 rule, indicated that such general approvals would be important to minimize the negative impacts of the tariffs and the inefficiencies of the Section 232 exclusions process, which these commenters indicated was undermining U.S. national security and economic security because of the difficulty and increased costs involved in obtaining needed steel and aluminum

articles, including in certain cases for U.S. defense applications. Commerce took a deliberative approach in identifying what HTSUS codes could be considered for inclusion as GAEs and specified criteria in the December 14 rule to explain how the adoption of these GAEs would not undermine the national security objectives of the Section 232 process and would instead help to protect U.S. national security and economic security by improving the efficiency and effectiveness of the Section 232 exclusions process. Some commenters on the December 14 rule identified the implementation of the GAEs as an area where the transparency, effectiveness, and fairness of the process was improved.

However, other commenters on the December 14 rule raised concerns with the addition of the GAEs, in particular raising concerns that the addition would directly undermine U.S. national security and the objectives of the Section 232 exclusions process. These commenters on the December 14 rule highlighted that Commerce was not being consistent with the criteria Commerce used for justifying adding the GAEs. Therefore, these commenters noted that the addition of these GAEs had the potential to significantly undermine the national security objectives. These commenters also took issue with Commerce's claim that these GAEs would not negatively impact U.S. national security when describing the rationale for adding these GAEs. Comments received for the December 14 rule in this area primarily focused on the creation of specific GAEs containing articles for which exclusion requests had previously received objections and/or been denied. These commenters noted that for the addition of this subset of GAEs, regardless of the merits or rationale for adding the other GAEs, there was a disconnect with Commerce's stated criteria from the December 14 rule. Therefore, this subset of 29 GAEs must be removed from the regulations.

Commerce understands the importance of having a transparent, fair, and efficient product exclusion request process, consistent with the directive provided by the President to create this type of process to mitigate any unintended consequences of imposing the tariffs on steel and aluminum in order to protect critical U.S. national security interests. The publication of today's rule should make further improvements in all three respects.

In addition, Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment, and that there is good cause under 5 U.S.C. 553(d)(3) to waive the delay in effective date, because such delays would be either impracticable or contrary to the public interest. In order to ensure that the actions taken to adjust imports do not undermine users of steel or aluminum that are subject to the remedial actions instituted by the Proclamations and that are critical to protecting the national security of the United States, the Presidential Proclamations authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior Executive Branch officials as appropriate, to grant exclusions for the import of goods not currently available in the United States in a sufficient quantity or satisfactory quality, or for other specific national security reasons. The Presidential Proclamations further directed the Secretary to, within ten days, issue procedures for submitting and granting these requests for exclusions—this interim final rule fulfills that direction. As described above, the Secretary complied with the direction from the President with the publication of the March 19 rule, as well as in the improvements made in the September 11, June 10, and December 14 rules, and is taking the next step in improving the Section 232 exclusions process by making needed changes with the publication of today's rule, so as not to undermine the national security objectives for which the December 14 rule added the GAEs to the regulations. The immediate implementation of an effective exclusion request process, consistent with the intent of the Presidential Proclamations, also required creating a process to allow any individual or organization in the United States to submit objections to submitted exclusion requests. The objection process was created with the publication of the March 19 rule, and the subsequent rules further improved specific aspects of the Section 232 exclusions process. The publication of today's rule makes needed changes in the Section 232 exclusions process to create the type of fair, transparent, and efficient process that was intended in the March 19, September 11, June 10, and December 14 rules, but commenters noted that the specific subset of GAEs that contained steel or aluminum articles for which exclusion requests had received objections and/or been denied. Today's rule makes critical changes to further ensure a fair, transparent, and efficient exclusion process by ensuring the GAEs that remain in the regulations are consistent with the objectives of the Section 232 exclusion process.

If this interim final rule were to be delayed to allow for public comment or to provide for a thirty-day delay in the date of effectiveness, companies in the United States would be unable to immediately benefit from the improvements made to the GAE process and could face significant economic hardship, which could potentially create a detrimental effect on the general U.S. economy and national security. Comments received on the December 14 rule that were critical of the GAEs were clear that the removal of GAEs that consisted of HTSUS codes that received objections and/or denials under the Section 232 process was needed. Commenters noted that failure to provide this additional improvement could allow the ''floodgates'' to open for imports of those articles, and that the influx of such articles could undermine the efficiency of the Section 232 process. Commenters also noted that if this specific improvement is not made, significant economic consequences could occur. Given the imports of these articles have already been objected to and/or denied in exclusion requests under the Section 232 process for national security reasons, allowing these specific GAEs to exist could undermine other critical U.S. national security interests.

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

List of Subjects in 15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Imports, Investigations, National security.

For the reasons set forth in the preamble, part 705 of subchapter A of 15 CFR chapter VII is amended as follows:

PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

■ 1. The authority citation for part 705 continues to read as follows:

Authority: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

■ 2. In part 705, amend Supplement No. 2 by revising the supplement heading and the table to read as follows:

Supplement No. 2 to Part 705—GENERAL APPROVED EXCLUSIONS (GAEs) FOR STEEL ARTICLES UNDER THE SECTION 232 EXCLUSIONS PROCESS

* * * * *

GAE Identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.1.S: 7304592030	7304592030. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, OTHER THAN COLD-DRAWN/COLD-ROLLED (COLD-REDUCED), SUITABLE FOR BOILERS ETC, HEAT-RESISTING STL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.2.S: 7304592080	7304592080. TUBES/PIPES/H PRFLS ALLOY STL, SMLSS, CIRC CS, OTHER THAN COLD-DRAWN/COLD-ROLLED (COLD-REDUCED), SUIT FOR BOILERS ETC, NOT HT-RSST STL, OS DIAMETER >406.4MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.4.S: 7222406000	7222406000. ANGLES SHAPES AND SECTIONS STAINLESS STEEL, OTHER THAN HOT ROLLED, NOT DRILLED, NOT PUNCHED, AND NOT OTHERWISE ADVANCED.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.5.S: 7306901000	7306901000. OTH TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, RIVETED/SIMILARLY CLOSED (NOT WELDED).	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.6.S: 7212600000	7212600000. FLAT-ROLLED IRON/NONALLOY STL, WDTH <600MM, CLAD.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.8.S: 7220207060	7220207060. FLAT-ROLLED STAINLESS STL, WDTH <300MM, NFW THAN COLD-RLD (COLD-REDUCED), THICKNESS >0.25MM BUT </= 1.25MM, </= 0.5% NICKEL <15% CHROMIUM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.9.S: 7223005000	7223005000. FLAT WIRE OF STAINLESS STEEL	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.10.S: 7220208000 ...	7220208000. FLAT-ROLLED STAINLESS STL, WDTH <300MM, NFW THAN COLD-RLD (COLD-REDUCED), THK </= 0.25MM, RAZOR BLADE STL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.11.S: 7217108060 ...	7217108060. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >/= 0.6% CARBON, NOT HEAT-TREATED, OS DIAMETER <1.0MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.12.S: 7226923060 ...	7226923060. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, NFW THAN COLD-RLD (COLD-REDUCED), TOOL STEEL OTH THAN HIGH-SPEED, OTHER THAN BALL-BEARING STEEL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.13.S: 7229905010 ...	7229905016. ROUND WIRE OTHER ALLOY STL, OS DIAMETER <1.0MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.15.S: 7304598060 ...	7304598060. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, OTHER THAN COLD-DRAWN/COLD-ROLLED (COLD-REDUCED), OS DIAMETER >285.8MM BUT <406MM, WALL THK <12.7MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.17.S: 7304246030 ...	7304246030. TUBING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, OS DIAMETER </= 114.3MM, WALL THK >9.5MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.18.S: 7229905031 ...	7229905031. ROUND WIRE OTHER ALLOY STL, WITH OS DIAMETER >/= 1.0MM BUT <1.5MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.19.S: 7304598010 ...	7304598010. TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL, SEAMLESS, CIRC CS, OTHER THAN COLD-DRAWN/COLD-ROLLED (COLD-REDUCED), NOT HEAT-RESISTANT, OS DIAMETER <38.1MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.20.S: 7219310010 ...	7219310010. FLAT-ROLLED STAINLESS STL, WDTH >/= 600MM, NFW THAN COLD-RLD (COLD-REDUCED), THK >/= 4.75MM, COILS.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.

GAE Identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.21.S: 7304598045 ...	7304598045. TUBES/PIPES/HLLW PRFLS OTH ALLOY STL, SMLESS, CIRC CS, OTHER THAN COLD-DRAWN/COLD-ROLLED (COLD-REDUCED), NOT HEAT-RESISTANT, OS DIAMETER >/= 190.5MM BUT </= 285.8MM, WALL THK <12.7MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.22.S: 7306401090 ...	7306401090. OTH TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, WELDED, CIRC CS, WALL THK <1.65MM, </= 0.5% NICKEL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.24.S: 7211296080 ...	7211296080. FLAT-ROLLED IRON/NONALLOY STL, WIDTH >/= 300MM BUT <600MM, NOT CLAD/PLATED/COATED, NFW THAN COLD-RLD (COLD-REDUCED), >/= 0.25% CRBN, THK </= 1.25MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.25.S: 7217201500 ...	7217201500. FLAT WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.26.S: 7219120026 ...	7219120026. FLAT-ROLLED STAINLESS STL, WDTH >1575MM, HOT-RLD, COILS, THK >6.8MM BUT <10MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.28.S: 7304243010 ...	7304243010. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OS DIAMETER <215.9MM, WALL THK <12.7MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.29.S: 7219220035 ...	7219220035. FLAT-ROLLED STAINLESS STL, THICKNESS >/= 4.75MM BUT <10MM, WIDTH >/= 600MM BUT <1575MM, HOT-RLD, NOT COILS, THK 4.75–10MM, >0.5% NICKEL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.30.S: 7222403085 ...	7222403085. SHAPES/SECTIONS STAINLESS STL, HOT-RLD, NOT DRILLED/PUNCHED/ADVANCED, MAX CROSS SECTION <80MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.31.S: 7222403045 ...	7222403045. SHAPES/SECTIONS STAINLESS STL, HOT-RLD, NOT DRILLED/PUNCHED/ADVANCED, MAX CS >/= 80MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.32.S: 7219110060 ...	7219110060. FLAT-ROLLED STAINLESS STL, WDTH >1575MM, HOT-RLD, COILS, THK >10MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.36.S: 7219110030 ...	7219110030. FLAT-ROLLED STAINLESS STL, WIDTH >/= 600MM BUT <1575MM, HOT-RLD, COILS, THK >10MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.40.S: 7220206060 ...	7220206060. FLAT-ROLLED STAINLESS STL, WDTH <300MM, NFW THAN COLD-RLD (COLD-REDUCED), THK >1.25MM, </= 0.5% NICKEL, <15% CHROMIUM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.41.S: 7217108025 ...	7217108025. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, >0.6% CARBON, HEAT-TREATED, OS DIAMETER <1.0MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.42.S: 7220121000 ...	7220121000. FLAT-ROLLED STAINLESS STL, WIDTH >/= 300MM BUT <600MM, HOT-RLD, THK <4.75MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.43.S: 7209900000 ...	7209900000. FLAT-ROLLED IRON/NONALLOY STL, WDTH >/= 600MM, COLD-RLD, NOT CLAD/PLATED/COATED, WHETHER OR NOT IN COILS.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.44.S: 7213913020 ...	7213913020. BARS/RODS IRON/NA STL, IRR COILS, HOT-RLD, CIRC CS, OS DIAMETER <14MM, NOT TEMPRD/TREATD/PARTLY MFTD, WELDING QUALITY WIRE ROD.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.45.S: 7306617060 ...	7306617060. OTH TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL (NOT STAINLESS), WELDED, SQ/RECT CS, WALL THK <4MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.46.S: 7216330090 ...	7216330090. H SECTIONS IRON/NONALLOY STL, HOT-RLD/DRWN/EXTRD, HEIGHT >/= 80MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.47.S: 7217905030 ...	7217905030. WIRE IRON/NONALLOY STL, NOT PLATED/COATED WITH BASE METALS OR PLASTICS, <0.25% CARBON.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.48.S: 7226923030 ...	7226923030. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, NFW THAN COLD-RLD (COLD-REDUCED), TOOL STEEL OTH THAN HIGH-SPEED, BALL-BEARING STL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.

GAE Identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.49.S: 7219120051 ...	7219120051. FLAT-ROLLED STAINLESS STL, WIDTH >/= 1370MM BUT <1575MM, HOT-RLD, COILS, THICKNESS >/= 4.75MM BUT <6.8MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.50.S: 7227906020 ...	7227906020. BARS/RODS OTHER ALLOY STL, IRR COILS, HOT-RLD, NOT TOOL STL, WELDING QUALITY WIRE RODS.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.51.S: 7217905090 ...	7217905090. WIRE IRON/NONALLOY STL, NOT PLATED/COATED WITH BASE METALS OR PLASTICS, >/= 0.6% CARBON.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.57.S: 7304901000 ...	7304901000. TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, SEAMLESS, NONCIRCULAR CROSS SECTION, WALL THK >/= 4MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.58.S: 7304390002 ...	7304390002. TUBES/PIPES/HLLW PRFLS IRON/NA STL, SMLESS, CIRC CS, OTHER THAN COLD-DRAWN/COLD-ROLLED (COLD-REDUCED), SUITABLE FOR BOILERS ETC, OS DIAMETER <38.1MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.59.S: 7219120071 ...	7219120071. FLAT-ROLLED STAINLESS STL, WDTH >600MM BUT <1370MM, HOT-RLD, COILS, THICKNESS >/= 4.75MM BUT <10MM, NOT HIGH-NICKEL ALLOY, >0.5% NICKEL, </= 1.5% OR >/= 5% MOLYBDENUM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.61.S: 7217905060 ...	7217905060. WIRE IRON/NONALLOY STL, PLATED/COATED, >0.25% BUT <0.6% CARBON.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.62.S: 7220125000 ...	7220125000. FLAT-ROLLED STAINLESS STL, WDTH <300MM, HOT-RLD, THK <4.75MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.63.S: 7226928005 ...	7226928005. FLAT-ROLLED OTH ALLOY STL, WDTH <300MM, NFW THAN COLD-RLD (COLD-REDUCED), NOT TOOL STL, THK >0.25MM, HIGH-NICKEL ALLOY STL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.64.S: 7217106000 ...	7217106000. OTHER WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.65.S: 7219120021 ...	7219120021. FLAT-ROLLED STAINLESS STL, WIDTH >/= 1370MM BUT </= 1575MM, HOT-RLD, COILS, THICKNESS >6.8MM BUT </= 10MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.66.S: 7304390016 ...	7304390016. TUBES/PIPES/HOLLOW PROFILES IRON/NA STL, SEAMLESS, CIRC CS, OTHER THAN COLD-DRAWN/COLD-ROLLED (COLD-REDUCED), GALVANIZED, OS DIAMETER </= 114.3MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.67.S: 7304244040 ...	7304244040. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAMETER >/= 215.9MM BUT </= 285.8MM, WALL THK >/= 12.7MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.69.S: 7304413005 ...	7304413005. TUBES/PIPES/HOLLOW PRFLS STAINLESS STL, SEAMLESS, CIRC CS, COLD-DRWN/RLD (COLD-REDUCED), OS DIAMETER <19MM, HIGH-NICKEL ALLOY STL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.70.S: 7215500090 ...	7215500090. OTHER BARS/RODS IRON/NONALLOY STL, COLD-FORMED/FINISHED, NOT COILS, >/= 0.6% CARBON.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.72.S: 7227200030 ...	7227200030. BARS/RODS SILICO-MANGANESE STL, IRR COILS, HOT-RLD, WELDING QUALITY WIRE RODS, STAT NOTE 6.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.73.S: 7306697060 ...	7306697060. OTH TUBES/PIPES/HOLLOW PROFILES OTH ALLOY STL (NOT STAINLESS), WELDED, OTH NONCIRCULAR CS, WALL THK <4MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.74.S: 7302101045 ...	7302101045. RAILS IRON/NONALLOY STL, NEW, HEAT TREATED, >30KG/M.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.77.S: 7305316090 ...	7305316090. OTHER TUBES/PIPES ALLOY STL, CIRC CS, OS DIAMETER >406.4MM, NOT LINE PIPE OR CASING (OIL/GAS), LONGITUDINALLY WELDED, NOT TAPERED PIPES/TUBES, NON-STAINLESS ALLOY STEEL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.

GAE Identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.79.S: 7226990110 ...	7226990110. FLAT-ROLLED OTH ALLOY STL, WDTH <600MM, ELECTROLYTICALLY PLATD/COATD W/ ZINC, NOT GRAIN ORIENTED, NOT OF HIGH-SPEED STEEL, FURTHER WORKED THAN HOT-ROLLED OR COLD-ROLLED.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.80.S: 7225506000 ...	7225506000. FLAT-ROLLED OTH ALLOY STL, WDTH >/= 600MM, COLD-RLD, THK >/= 4.75MM, NOT OF TOOL STEEL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.81.S: 7304905000 ...	7304905000. TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, SEAMLESS, NOT CIRCULAR CS, WALL THK <4MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.82.S: 7219220005 ...	7219220005. FLAT-ROLLED STAINLESS STL, WDTH >/= 600MM, HOT-RLD, NOT COILS, THICKNESS >/= 4.75MM BUT </= 4.75MM BUT </= 10MM, HIGH-NICKEL ALLOY STL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.83.S: 7217104045 ...	7217104045. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON, OS DIAMETER <1.5MM, HEAT-TREATED, IN COILS WEIGHING >2 KG.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.84.S: 7209270000 ...	7209270000. FLAT-ROLLED IRON/NONALLOY STL, WDTH >/= 600MM, COLD-RLD, NOT CLAD/PLATED/COATED, NOT COILS, THK 0.5–1MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.85.S: 7219900060 ...	7219900060. OTHER FLAT-ROLLED STAINLESS STL, WDTH >/= 600MM, FURTHER WORKED THAN COLD-RLD, </= 0.5% NICKEL, <15% CHROMIUM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.86.S: 7219120081 ...	7219120081. FLAT-ROLLED STAINLESS STL, WIDTH >/= 600MM BUT <1370MM, HOT-RLD, COILS, NOT HIGH-NICKEL ALLOY, THICKNESS >/= 4.75MM BUT.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.88.S: 72241000005	7224100005. INGOTS AND OTHER PRIMARY FORMS OF HIGH-NICKEL ALLOY STEEL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.89.S: 7213200080 ...	7213200080. BARS/RODS IRON/NONALLOY STL, HOT-RLD, IRR COILS, FREE-CUTTING STL, <0.1% LEAD.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.90.S: 7216100010 ...	7216100010. U SECTIONS IRON/NONALLOY STL, HOT-ROLLED/DRAWN/EXTRUDED, HEIGHT <80MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.91.S: 7306695000 ...	7306695000. OTH TUBES/PIPES/HOLLOW PROFILES IRON/NONALLOY STL, WELDED, OTH NONCIRCULAR CS, WALL THK <4MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.93.S: 7208380015 ...	7208380015. FLAT-ROLLED IRON/NA STL, WDTH >/= 600MM, HOT-RLD, NOT CLAD/PLATED/COATED, COILS, THICKNESS >/= 3MM BUT <4.75MM, HIGH-STRENGTH STL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.94.S: 7217104090 ...	7217104090. ROUND WIRE IRON/NONALLOY STL, NOT PLATED/COATED, <0.25% CARBON, OS DIAMETER <1.5MM, NOT HEAT-TREATED.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.95.S: 7302105020 ...	7302105020. RAILS OF ALLOY STEEL, NEW	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.96.S: 7210706030 ...	7210706030. FLAT-ROLLED IRON/NA STL, WDTH >/= 600MM, PAINTD/VARNSHD/COATD W/PLASTICS, ELECTROLYTICALLY PLATD/COATD W/ZINC.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.97.S: 7304244060 ...	7304244060. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, NOT THREADED/COUPLED, OS DIAMETER >285.8MM BUT /=12.7MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.99.S: 7304243040 ...	7304243040. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OS DIAMETER >/= 215.9MM BUT /=12.7MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.100.S: 7304243020	7304243020. CASING (OIL/GAS DRILLING) STAINLESS STL, SEAMLESS, THREADED/COUPLED, OS DIAMETER <215.9MM, WALL THK >/= 12.7MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.101.S: 7219130081	7219130081. FLAT-ROLLED STAINLESS STL, WIDTH >/= 600MM BUT <1370MM, NFW THAN HOT-RLD, COILS, ANNEALED OR PICKLED, THICKNESS >/= 3MM BUT <4.75MM, <0.5% OR >24% NICKEL.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.

GAE Identifier	Description of steel that may be imported (at 10-digit harmonized tariff schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.102.S: 7211140090	7211140090. FLAT-ROLLED IRON/NONALLOY STL, WDTH <600MM, NOT CLAD/PLATED/COATED, NFW THAN HOT-RLD, NOT UNIVERSAL MILL PLATE, THK >/= 4.75MM, NOT HIGH-STRENGTH STEEL, COILS.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.103.S: 7218910030	7218910030. SEMIFINISHED STAINLESS STL, RECTANGULAR CROSS SECTION, WDTH <4X THK, CS AREA >/= 232 CM2.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.104.S: 7306213000	7306213000. CASING (OIL/GAS DRILLING) STAINLESS STL, WELDED, THREADED/COUPLED.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.105.S: 7211234500	7211234500. FLAT-ROLLED IRON/NONALLOY STL, WDTH <300MM, NOT CLAD/PLATED/COATED, NFW THAN COLD-RLD (COLD-REDUCED), <0.25% CRBN, THK </= 0.25MM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.106.S: 7220206080	7220206080. FLAT-ROLLED STAINLESS STL, WDTH <300MM, NFW THAN COLD-RLD (COLD-REDUCED), THK >1.25MM, NOT HIGH-NICKEL ALLOY, </= 0.5% NICKEL, >/= 15% CHROMIUM.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.107.S: 7305391000	7305391000. OTHER TUBES/PIPES IRON/NONALLOY STL, CIRC CS, OS DIAMETER >406.4MM, WELDED, OTHER THAN LONGITUDALLY WELDED.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.108.S: 7217204550	7217204550. ROUND WIRE IRON/NONALLOY STL, PLATED/COATED WITH ZINC, OS DIAMETER >/= 1.0MM BUT <1.5MM, >/= 0.25% BUT <0.6% CARBON.	.....	85 FR 81079, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.

Note to Supplement No. 2: *Harmonized Tariff Schedule of the United States (HTSUS) Classifications are identified by the U.S. International Trade Commission (ITC) through its web version of the Harmonized Tariff Schedule. The list of the HTSUS Classifications referenced in this table of GAEs is drawn from the HTSUS and ITC Change Records for HTSUS Classifications (compiled at https://hts.usitc.gov/) and will be amended when the ITC publishes subsequent Change Records. If there are any discrepancies between the list of the HTSUS Classifications in this table and the HTSUS Classifications identified by the ITC in the Harmonized Tariff Schedule of the United States and the associated Change Records, the ITC's list of HTSUS Classifications shall be controlling. Therefore, if an HTSUS Classification defining a GAE is split or otherwise modified by the ITC in the HTSUS, GAEs are extended to the newly-created HTSUS Classification(s), so long as the new 'child' HTSUS Classification(s) contain products falling entirely within the scope of the old 'parent' HTSUS classification. These types of 'inherited' GAEs are effective from the effective date of the change to the HTSUS, even prior to a Commerce rule being published to add the new HTSUS number to the GAE list under supplement no. 2. During the period after the effective date of the change to the HTSUS and before the GAE is updated, ACE will reject entries claiming the exclusion with the new HTSUS number and importers will have to make entry without the exclusion. In order for importers to preserve their rights, if any, to the exclusion with the new HTSUS number during this period, importers are advised to seek extensions of liquidation of the affected entries with CBP until Commerce is able to update and publish a revised GAE list under this supplement no. 2.*

■ 3. In part 705, amend Supplement No. 3 by revising the supplement heading and the table to read as follows:

Supplement No. 3 to Part 705—GENERAL APPROVED EXCLUSIONS (GAEs) FOR ALUMINUM ARTICLES UNDER THE SECTION 232 EXCLUSIONS PROCESS

* * * * *

GAE Identifier	Description of aluminum that may be imported (at 10-digit Harmonized) Tariff Schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.1.A: 7609000000	7609000000. ALUMINUM TUBE OR PIPE FITTINGS (COUPLINGS, ELBOWS, SLEEVES).	.....	85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.

GAE Identifier	Description of aluminum that may be imported (at 10-digit Harmonized) Tariff Schedule of the United States (HTSUS) statistical reporting number or more narrowly defined at product level)	Other limitations (*e.g.,* country of import or quantity allowed)	**Federal Register** citation
GAE.3.A: 7607196000	7607196000. ALUMINUM FOIL OF THICKNESS </= 0.2MM, NOT BACKED, OTHER THAN ROLLED BUT NOT FURTHER WORKED, OTHER THAN ETCHED CAPACITOR FOIL, OTHER THAN CUT TO SHAPE W/ THICKNESS </= 0.15 MM.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.4.A: 7604210010	7604210010. ALUMINUM ALLOY HOLLOW PROFILES OF HEAT–TREATABLE INDUSTRIAL ALLOYS OF A KIND DESCRIBED IN NOTE 6 TO THIS CHAPTER.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.5.A: 7604291010	7604291010. ALUMINUM ALLOY PROFILES OTHER THAN HOLLOW PROFILES OF HEAT–TREATABLE INDUSTRIAL ALLOYS OF A KIND DESCRIBED IN NOTE 6 TO THIS CHAPTER.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.6.A: 7607191000	7607191000. ALUMINUM FOIL OF THICKNESS </= 0.2MM, NOT BACKED OTHER THAN ROLLED BUT NOT FURTHER WORKED, ETCHED CAPACITOR FOIL.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.7.A: 7606116000	7606116000. ALUMINUM PLATES, SHEETS AND STRIP, THICKNESS > 0.2MM, RECTANGULAR (INCLUDING SQUARE), NOT ALLOYED, CLAD.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.8.A: 7605290000	7605290000. ALUMINUM WIRE ALLOY, MAXIMUM CROSS-SECTIONAL DIMENSION </= 7MM.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.9.A: 7601209080	7601209080. UNWROUGHT ALUMINUM ALLOY, SHEET INGOT (SLAB) OF A KIND DESCRIBED IN STATISTICAL NOTE 3 TO THIS CHAPTER.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.10.A: 7607116010	7607116010. ALUMINUM FOIL OF THICKNESS >0.01 MM AND </=0.15 MM, ROLLED, NOT BACKED, BOXED & WEIGHING </=11.3 KG.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.12.A: 7607201000	7607201000. ALUMINUM FOIL OF THICKNESS </=0.2 MM, BACKED COVERED OR DECORATED WITH A CHARACTER, DESIGN, FANCY EFFECT OR PATTERN.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.
GAE.13.A: 7604295090	7604295090. ALUMINUM ALLOY BARS AND RODS, OTHER THAN ROUND CROSS SECTION, OTHER THAN HEAT–TREATABLE INDUSTRIAL ALLOYS OF A KIND DESCRIBED IN NOTES 5 & 6 OF THIS CHAPTER.		85 FR 81083, 12/14/2020. 86 FR [INSERT FR PAGE NUMBER] December 9, 2021.

Note to Supplement No. 3: *Harmonized Tariff Schedule of the United States (HTSUS) Classifications are identified by the U.S. International Trade Commission (ITC) through its web version of the Harmonized Tariff*

Schedule of the United States. The list of the HTSUS Classifications referenced in this table of GAEs is drawn from the HTSUS and ITC Change Records for HTSUS Classifications (compiled at https://hts.usitc.gov/) and will be amended when the ITC publishes subsequent Change Records. If there are any discrepancies between the list of HTSUS Classifications in this table and the HTSUS Classifications identified by the ITC in the Harmonized Tariff Schedule of the United States and the associated Change Records, the ITC's list of HTSUS Classifications shall be controlling. Therefore, if an HTSUS Classification defining a GAE is split or otherwise modified by the ITC in the HTSUS, GAEs are extended to the newly-created HTSUS Classification(s), so long as the new 'child' HTSUS Classification(s) contain products falling entirely within the scope of the old 'parent' HTSUS classification. These types of 'inherited' GAEs are effective from the effective date of the change to the HTSUS, even prior to a Commerce rule being published to add the new HTSUS number to the GAE list under this supplement no. 3. During the period after the effective date of the change to the HTSUS and before the GAE is updated, ACE will reject entries claiming the exclusion with the new HTSUS number and importers will have to make entry without the exclusion. In order for importers to preserve their rights, if any, to the exclusion with the new HTSUS number during this period, importers are advised to seek extensions of liquidation of the affected entries with CBP until Commerce is able to update and publish a revised GAE list under this supplement no. 3.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021–26634 Filed 12–8–21; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, and 744

[Docket No. 211201–0249]

RIN 0694–AI65

Revision of Controls for Cambodia Under the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In response to deepening Chinese military influence in Cambodia, which undermines and threatens regional security, as well as growing corruption and human rights abuses by the Government of Cambodia, in this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to apply more restrictive treatment to exports and reexports to, and transfers within, Cambodia of items subject to the EAR. BIS is taking this action to address recent actions by the Government of Cambodia that are contrary to the national security and foreign policy interests of the United States. Further, BIS updates a Country Group designation for Cambodia under the EAR to reflect the country's identification by the State Department as subject to a United States arms embargo.

DATES: This rule is effective December 9, 2021.

FOR FURTHER INFORMATION CONTACT: Tracy Patts, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, by email at *Foreign.Policy@bis.doc.gov,* or by phone at 202–482–4252.

SUPPLEMENTARY INFORMATION:

Background

Cambodia Under the Export Administration Regulations

BIS's current licensing policy for Cambodia dates from 1992, when the agency amended the EAR in support of the settlement of political conflict in Cambodia and the lifting of a U.S. trade embargo on Cambodia. (57 FR 11576, April 6, 1992.) Recent changes in Cambodian foreign policy, however, undermine regional security as well as U.S. national security and foreign policy interests, and necessitate a revision to export controls for Cambodia under the EAR.

In June 2021, during an official visit to Cambodia, Deputy Secretary of State Wendy Sherman expressed serious concerns about the People's Republic of China's (PRC or China) military presence and construction of facilities at Ream Naval Base in Cambodia. Deputy Secretary Sherman emphasized that an exclusive-use PRC military base in Cambodia would undermine Cambodian sovereignty, threaten regional security, and negatively impact U.S.-Cambodia relations. Since then, the Department of State (State) and the Treasury (Treasury), have taken action under their respective authorities to address such concerns. In November 2021, State and Treasury designated two Cambodian military officials due to their involvement in significant corruption, including in connection with the Ream Naval Base. At that time, State, Treasury, and the Department of Commerce also issued an advisory cautioning U.S. businesses regarding the potential exposure to entities in Cambodia, such as the Cambodian military, that engage in human rights abuses, corruption, and other destabilizing conduct.

The United States has determined that expanded Chinese military influence in Cambodia and corruption and human rights abuses committed by Cambodian government actors, including the Cambodian military, are contrary to U.S. national security and foreign policy interests. Therefore, the U.S. Government is restricting certain exports and reexports to, and transfers within, Cambodia to ensure that items subject to the EAR are not available to Cambodia's military and military-intelligence services without prior review by the U.S. Government, and is also adding Cambodia to the list of countries subject to a more stringent review policy for license applications involving national security-controlled items. In this rule, BIS amends the EAR to implement more restrictive treatment for Cambodia under the EAR.

Changes Made by This Rule for Cambodia Under the EAR

BIS is taking this action to address recent actions by the Government of Cambodia that are contrary to the national security and foreign policy interests of the United States and threaten regional security. The rule makes four broad changes to the EAR to reflect BIS's more restrictive licensing approach to Cambodia. It adds Cambodia to: (1) The list of countries subject to the licensing policy in § 742.4(b)(7), (2) the list of countries subject to military end use and end user controls in § 744.21, (3) the list of countries subject to military intelligence end use and end user controls in § 744.22, and (4) the list of countries subject to a U.S. arms embargo under Country Group D:5.

Licensing Policy

This rule adds Cambodia to the list of countries subject to the licensing policy in § 742.4(b)(7) (NS-controlled items) of the EAR. The license review policy for NS-controlled items in § 742.4(b)(7) applies to transactions with the countries listed in § 744.21, and now applies to Cambodia as well. This rule removes the reference to Cambodia in the policy described in § 742.4(b)(6), which is superseded in this rule by the

policy for Cambodia in paragraph (b)(7)(i).

Section 744.21

This rule adds Cambodia to the countries subject to the 'military end use' and 'military end user' (MEU) restrictions in § 744.21 of the EAR. In addition to the license requirements for items specified on the Commerce Control List (CCL), § 744.21 prohibits the export, reexport, or transfer (in-country) without a license of items subject to the EAR and are listed in supplement no. 2 to part 744—List of Items Subject to the Military End Use or End User License Requirement of § 744.21—to Burma, China, the Russian Federation, or Venezuela. With the publication of this rule, Cambodia is now added to the countries subject to this license requirement. Such exports, reexports, or transfers (in-country) require a license if, at the time of the export, reexport, or transfer (in-country), the exporter, reexporter, or transferor (in-country) has ''knowledge,'' as defined in § 772.1 of the EAR that the item is intended, entirely or in part, for a 'military end use,' or 'military end user,' in Burma, Cambodia, China, the Russian Federation, or Venezuela. Applications submitted for the export or reexport to Cambodia, or transfer within Cambodia, of an item in supplement no. 2 to part 744 under this section will be reviewed with a presumption of denial.

This rule also adds a reference to Cambodia in supplement no. 7 to part 744—'Military End User' List but does not add any entities located in Cambodia to the list of Military End Users (MEU List). The MEU List notifies the public that certain entities are subject to the military end-user prohibitions in § 744.21 of the EAR. BIS may add entities located in Cambodia to the MEU List in the future.

Section 744.22

This rule also adds Cambodia to the countries subject to the 'military-intelligence end use' and 'military-intelligence end user' (MIEU) restrictions in § 744.22 of the EAR. In addition to the license requirements for items specified on the CCL, § 744.22 prohibits the export, reexport, or transfer (in-country) without a license of items subject to the EAR to Burma, China, the Russian Federation, Venezuela, or a country listed in Country Group E:1 or E:2. With the publication of this rule, Cambodia is now added to the countries subject to this license requirement. Such exports, reexports, or transfers (in-country) require a license if, at the time of the export, reexport, or transfer (in-country), the exporter, reexporter, or transferor (in-country) has ''knowledge,'' as defined in § 772.1 of the EAR that the item is intended, entirely or in part, for a 'military-intelligence end use,' or 'military-intelligence end user,' in Burma, Cambodia, China, the Russian Federation, Venezuela or the countries listed in Country Group E:1 or E:2. Applications submitted for the export or reexport to Cambodia, or transfer within Cambodia, of an EAR item under this section will be reviewed with a presumption of denial.

With this amendment to § 744.22 of the EAR, BIS is also revising § 744.6(b)(5) of the EAR to restrict specific activities of ''U.S. persons'' in connection with a 'military-intelligence end use' or 'military-intelligence end user' in Cambodia.

Country Group D:5

The amendments in this rule are made concurrent with other U.S. Government actions intended to support the revision of export control policy toward Cambodia in light of the recent developments in Cambodia. In particular, the Department of State is amending the International Traffic in Arms Regulations (ITAR) § 126.1, ''Prohibited Exports, Imports, and Sales to or from Certain Countries'' to add Cambodia in the list of countries for which it is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services. This change reflects the policy of the United States to deny licenses and other approvals for the export and import of defense articles and defense services destined for or originating in Cambodia, except as otherwise provided within the ITAR.

BIS harmonizes the arms embargo-related provisions in the EAR with the regulation of arms embargoes in § 126.1 of the ITAR. The ITAR list incorporates countries subject to United Nations Security Council (UNSC) and U.S. arms embargoes. BIS primarily implements such controls through Country Group D:5 ''U.S. Arms Embargoed Countries,'' in supplement no. 1 to part 740 of the EAR.

Countries listed in Country Group D:5 are subject to additional restrictions in the EAR, including on de minimis U.S. content, license exception availability, and licensing policy for certain items. For example, license applications for the export or reexport of items classified under 9x515 or ''600 series'' Export Control Classification Numbers (ECCNs) to countries in Country Group D:5 are reviewed consistent with the policies in § 126.1 of the ITAR, as provided in paragraph (b)(1)(ii) of § 742.4 of the EAR.

Therefore, BIS revises Country Group D to add Cambodia to Country Group D:5 consistent with the Department of State's amendment adding Cambodia to ITAR § 126.1 on December 9, 2021.

Export Control Reform Act of 2018

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

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated to be a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866.

2. This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

3. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

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

5. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of

information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. The collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to not significantly increase with the publication of this rule.

Savings Clause

Shipments of items that may no longer be made under No License Required (NLR) or license exception as a result of this action and were on dock for loading, on lighter, laden aboard an exporting or transferring carrier, or en route aboard a carrier to a port of export or reexport on January 10, 2022, pursuant to actual orders for export to Cambodia, reexport to Cambodia, or transfer (in country) within Cambodia may proceed to their destination under the prior authorization.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 740, 742, and 744 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Supplement no. 1 to part 740 is amended in the Country Group D table by revising the entry for ''Cambodia'' and note 1 to the table to read as follows:

Supplement No. 1 to Part 740—Country Groups

* * * * *

COUNTRY GROUP D

Country	[D:1] National security	[D:2] Nuclear	[D:3] Chemical & biological	[D:4] Missile technology	[D:5] U.S. arms embargoed countries [1]
* * *	*	*		*	*
Cambodia	X				X
* * *	*	*		*	*

[1] **Note to Country Group D:5:** Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the **Federal Register**. The list of arms embargoed destinations in this table is drawn from 22 CFR 126.1 and State Department **Federal Register** notices related to arms embargoes (compiled and accessible at *https://www.pmddtc.state.gov*) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this table and the countries identified by the State Department as subject to a U.S. arms embargo (in the **Federal Register**), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

* * * * *

PART 742—[AMENDED]

■ 3. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

■ 4. Section 742.4 is amended by revising paragraphs (b)(6) and (7) to read as follows:

§ 742.4 National security.

* * * * *

(b) * * *

(6) The general policy for Laos is to approve license applications when BIS determines, on a case-by-case basis, that the items are for an authorized use in Laos and are not likely to be diverted to another country or use contrary to the national security or foreign policy controls of the Unied States.

(7)(i) For Burma, Cambodia, the People's Republic of China (China), the Russian Federation, and Venezuela, all applications will be reviewed to determine the risk of diversion to a military end user or military end use. There is a general policy of approval for license applications to export, reexport, or transfer items determined to be for civil end users for civil end uses. There is a presumption of denial for license applications to export, reexport, or transfer items that would make a material contribution to the ''development,'' ''production,'' maintenance, repair, or operation of weapons systems, subsystems, and assemblies, such as, but not limited to, those described in supplement no. 7 to this part, of Burma, Cambodia, China, the Russian Federation, or Venezuela.

(ii) The following factors are among those that will be considered in reviewing license applications described in paragraph (b)(7)(i) of this section:

(A) The appropriateness of the export, reexport, or transfer for the stated end use;

(B) The significance of the item for the weapon systems capabilities of the importing country;

(C) Whether any party is a 'military end user' as defined in § 744.21(g) of the EAR;

(D) The reliability of the parties to the transaction, including whether:

(*1*) An export or reexport license application has previously been denied;

(*2*) Any parties are or have been engaged in unlawful procurement or diversion activities;

(*3*) The parties are capable of securely handling and storing the items; and

(*4*) End-use checks have been and may be conducted by BIS or another

U.S. Government agency on parties to the transaction;

(E) The involvement of any party to the transaction in military activities, including activities involving the ''development,'' ''production,'' maintenance, repair, or operation of weapons systems, subsystems, and assemblies;

(F) Government strategies and policies that support the diversion of exports from their stated civil end use and redirection towards military end use; and

(G) The scope and effectiveness of the export control system in the importing country.

(iii) The review will also include an assessment of the impact of a proposed export of an item on the United States defense industrial base and the denial of an application for a license that would have a significant negative impact, as defined in section 1756(d)(3) of the Export Control Reform Act of 2018 (50 U.S.C. 4815(d)(3)), on such defense industrial base.

* * * * *

PART 744—[AMENDED]

■ 5. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 15, 2021, 86 FR 52069 (September 17, 2021); Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 6. Section 744.6 is amended by revising paragraph (b)(5) to read as follows:

§ 744.6 Restrictions on specific activities of "U.S. persons."

* * * * *

(b) * * *

(5) A 'military-intelligence end use' or a 'military-intelligence end user,' as defined in § 744.22(f), in Burma, Cambodia, the People's Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

* * * * *

■ 7. Section 744.21 is revised to read as follows:

§ 744.21 Restrictions on Certain 'military end use' or 'military end user' in Burma, Cambodia, the People's Republic of China, the Russian Federation, or Venezuela.

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR), you may not export, reexport, or transfer (in-country) any item subject to the EAR listed in supplement no. 2 to this part to Burma, Cambodia, the People's Republic of China (China), the Russian Federation, or Venezuela without a license if, at the time of the export, reexport, or transfer (in-country), you have ''knowledge,'' as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a 'military end use,' as defined in paragraph (f) of this section, or 'military end user,' as defined in paragraph (g) of this section, in Burma, Cambodia, China, the Russian Federation, or Venezuela.

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notification published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in Burma, Cambodia, China, the Russian Federation, or Venezuela. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(1) *'Military End-User' (MEU) List.* BIS may inform and provide notice to the public that certain entities are subject to the additional prohibition described under this paragraph (b) following a determination by the End-User Review Committee (ERC) that a specific entity is a 'military end user' pursuant to this section and therefore any exports, reexports, or transfers (in-country) to that entity represent an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in Burma, Cambodia, China, the Russian Federation, or Venezuela. Such entities may be added to supplement no. 7 to this part—'Military End-User' (MEU) List through **Federal Register** notifications published by BIS and will thus be subject to a license requirement for exports, reexports, or transfers (in-country) of items specified in supplement no. 2 to this part. The listing of entities under supplement no. 7 to this part is not an exhaustive listing of 'military end users' for purposes of this section. Exporters, reexporters, and transferors are responsible for determining whether transactions with entities not listed on supplement no. 7 to this part are subject to a license requirement under paragraph (a) of this section. The process in this paragraph (b)(1) for placing entities on the MEU List is only one method BIS may use to inform exporters, reexporters, and transferors of license requirements under this section.

(i) *End-User Review Committee (ERC).* The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the MEU List. Decisions by the ERC for purposes of the MEU List will be made following the procedures identified in this section and in supplement no. 5 to this part—Procedures for End-User Review Committee Entity List and 'Military End User' (MEU) List Decisions.

(ii) *License requirement for parties to the transaction.* The license requirement for entities listed in supplement no. 7 to this part applies to the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to this part when an entity that is listed on the MEU List is a party to the transaction as described in § 748.5(c) through (f) of the EAR.

(2) *Requests for removal from or modification of 'Military End-User' (MEU) List.* Any entity listed on the MEU List may request that its listing be removed or modified. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW, Room 3886, Washington, DC 20230; or by email at *ERC@bis.doc.gov.* In order for an entity listed on the MEU List to petition BIS for their removal or modification, as applicable, the entity must address why the entity is not a 'military end user' for purposes of this section.

(i) *Review.* The ERC will review such requests for removal or modification in accordance with the procedures set forth in supplement no. 5 to this part.

(ii) *BIS action.* The Deputy Assistant Secretary for Export Administration will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

(c) *License exception.* Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR.

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the ''additional information'' block of the application that ''this application is submitted because of the license requirement in § 744.21 of the EAR (Restrictions on a 'Military End Use' or 'Military End User' in Burma, Cambodia, the People's Republic of China, the Russian Federation, or Venezuela).'' In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the 'military end use' and 'military end user(s)' of the item(s). If you submit an attachment with your license application, you must reference the attachment in the ''additional information'' block of the application.

(e) *License review standards.* (1) Applications to export, reexport, or transfer (in-country) items described in paragraph (a) of this section will be reviewed with a presumption of denial.

(2) Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4), and 742.5(b)(4) of the EAR, if the end use may involve certain proliferation activities.

(3) Applications for items requiring a license for any reason that are destined to Burma, Cambodia, China, the Russian Federation, or Venezuela for a 'military end use' or 'military end user' also will be subject to the review policy stated in paragraph (e)(1) of this section.

(f) *Military end use.* In this section, 'military end use' means: Incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into items classified under Export Control Classification Numbers (ECCNs) ending in ''A018'' or under ''600 series'' ECCNs; or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, ''development,'' or ''production,'' of military items described on the USML, or items classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs.

(g) *Military end user.* In this section, the term 'military end user' means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support 'military end uses' as defined in paragraph (f) of this section.

(h) *Effects on contracts.* Venezuela: Transactions involving the export, reexport, or transfer (in country) of items to or within Venezuela are not subject to the provisions of this section if the contracts for such transactions were signed prior to November 7, 2014.

■ 8. Section 744.22 is revised to read as follows:

§ 744.22 Restrictions on exports, reexports, and transfers (in-country) to certain military-intelligence end uses or end users.

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR), you may not export, reexport, or transfer (in-country) any item subject to the EAR without a license from BIS if, at the time of the export, reexport, or transfer (in-country), you have ''knowledge'' that the item is intended, entirely or in part, for a 'military-intelligence end use' or a 'military-intelligence end user' in Burma, Cambodia, the People's Republic of China (China), Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notification published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item subject to the EAR because there is an unacceptable risk of use in, or diversion to, a 'military-intelligence end use' or a 'military-intelligence end user' in Burma, Cambodia, China, Russia, or Venezuela; or a country listed in Country Group E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

(c) *License exception.* Notwithstanding the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provision of License Exception GOV set forth in § 740.11(b)(2)(ii) of the EAR.

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the ''additional information'' block of the application that ''this application is submitted because of the license requirement in § 744.22 of the EAR (Restrictions on exports, reexports, and transfers (in-country) to certain military-intelligence end uses or end users).'' In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the military-intelligence end use(s) or end user(s) of the item(s). If you submit an attachment with your license application, you must reference the attachment in the ''additional information'' block of the application.

(e) *License review policy.* Applications to export, reexport, or transfer (in-country) items requiring a license pursuant to paragraph (a) or (b) of this section will be reviewed with a presumption of denial.

(f) *Definitions.* (1) 'Military-intelligence end use' means the ''development,'' ''production,'' operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of, or incorporation into, items described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations), or classified under ECCNs ending in ''A018'' or under ''600 series'' ECCNs, which are intended to support the actions or functions of a 'military-intelligence end user,' as defined in this section.

(2) 'Military-intelligence end user' means any intelligence or reconnaissance organization of the armed services (army, navy, marine, air force, or coast guard); or national guard. For license requirements applicable to other government intelligence or reconnaissance organizations in Burma, Cambodia, China, Russia, or Venezuela, see § 744.21. Military-intelligence end users subject to the license requirements set forth in this section include, but are not limited to, the following:

(i) *Burma.* Office of Chief of Military Security Affairs (OCMSA) and the Directorate of Signal.

(ii) *Cambodia.* General Department of Research and Intelligence (GDRI).

(iii) *Cuba.* Directorate of Military Intelligence (DIM) and Directorate of Military Counterintelligence (CIM).

(iv) *China, People's Republic of.* Intelligence Bureau of the Joint Staff Department.

(v) *Iran.* Islamic Revolutionary Guard Corps Intelligence Organization (IRGC–IO) and Artesh Directorate for Intelligence (J2).

(vi) *Korea, North.* Reconnaissance General Bureau (RGB).

(vii) *Russia.* Main Intelligence Directorate (GRU).

(viii) *Syria.* Military Intelligence Service.

(ix) *Venezuela.* General Directorate of Military Counterintelligence (DGCIM).

■ 9. Supplement No.7 to part 744 is amended in the table by adding in alphabetical order an entry for ''CAMBODIA'' to read as follows:

Supplement No. 7 to Part 744—'Military End-User' (MEU) List

* * * * *

Country	Entity	Federal Register citation
* *	*	* *
Cambodia	[Reserved] ...	[Reserved]
* *	*	* *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021–26633 Filed 12–8–21; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL TRADE COMMISSION

16 CFR Part 313

RIN 3084–AB42

Privacy of Consumer Financial Information Rule Under the Gramm-Leach-Bliley Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is amending its Privacy Rule to revise the rule's scope, to modify the rule's definitions of ''financial institution'' and ''Federal functional regulator,'' and to update the rule's annual customer privacy notice requirement. The amendments also remove certain examples in the rule that apply to financial institutions that now fall outside its scope. This action is necessary to conform the rule to the current requirements of the Gramm-Leach-Bliley Act (''GLBA''), as amended by the Dodd-Frank and FAST Acts, and the Commission's revisions to the Safeguards Rule, which are being announced simultaneously through a separate document published elsewhere in this issue of the **Federal Register**.

DATES: The amendments are effective January 10, 2022.

FOR FURTHER INFORMATION CONTACT: David Lincicum (202–326–2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute and Regulation

The GLBA was enacted in 1999.[1] The GLBA, among other things, requires that financial institutions provide their customers with initial and annual notices regarding their privacy practices, and allow their customers to opt out of sharing their information with certain nonaffiliated third parties.

Rulemaking authority to implement the GLBA's privacy provisions was initially spread among multiple agencies. The Federal Reserve Board (''the Fed''), the Office of Comptroller of the Currency (''OCC''), the Federal Deposit Insurance Corporation (''FDIC''), and the Office of Thrift Supervision (''OTS'') jointly adopted final rules to implement the notice and opt-out requirements of the GLBA in 2000.[2] The Commission, the National Credit Union Administration (''NCUA''), the Securities and Exchange Commission (''SEC''), and the Commodity Futures Trading Commission (''CFTC'') were part of the same interagency process, but each issued their rules separately.[3] In 2009, all those agencies jointly adopted a model form financial institutions could use to provide the required initial and annual privacy disclosures.[4]

As originally promulgated, the FTC's Privacy Rule covered a broad range of non-bank financial institutions such as payday lenders, mortgage brokers, check cashers, debt collectors, real estate appraisers, certain motor vehicle dealers, and remittance transfer providers. In 2010, the Dodd-Frank Act[5] transferred the majority of GLBA's privacy rulemaking authority from the Fed, NCUA, OCC, OTS, FDIC, and the Commission (in part) to the Consumer Financial Protection Bureau (''CFPB''). The CFPB then restated the implementing regulations in Regulation P, 12 CFR part 1016, in late 2011 (''Regulation P'').[6] However, under section 1029 of the Dodd-Frank Act, the Commission retained rulemaking authority for certain motor vehicle dealers.[7] Thus, in 2012, the Commission announced it was retaining the implementing regulations governing privacy notices for motor vehicle dealers at 16 CFR part 313.[8]

Despite the transfer of general rulemaking authority for the Privacy Rule to the CFPB, the Commission and other agencies retain their existing enforcement authority under the GLBA.[9] In addition, the SEC and CFTC retain rulemaking authority with respect to securities and futures-related companies, respectively.[10] Accordingly, as part of this rulemaking process, the Commission has consulted and coordinated, or offered to consult, with those agencies that have rulemaking and/or enforcement authority under the GLBA, including the CFPB, SEC, CFTC, and the National Association of Insurance Commissioners (''NAIC'').[11]

On December 4, 2015, Congress amended the GLBA as part of the FAST Act. This amendment, titled Eliminate Privacy Notice Confusion,[12] added GLBA subsection 503(f). This subsection

[1] Public Law 106–102, 113 Stat. 1338 (1999).

[2] Joint Final Rule, 65 FR 35162 (June 1, 2000) available at *https://www.federalregister.gov/documents/2001/04/27/01-10398/privacy-of-consumer-financial-information.*

[3] FTC Final Privacy Rule, 65 FR 33645 (May 24, 2000) available at *https://www.federalregister.gov/documents/2000/05/24/00-12755/privacy-of-consumer-financial-information;* NCUA Final Privacy Rule, 65 FR 31722 (May 18, 2000) available at *https://www.federalregister.gov/documents/2000/05/18/00-12014/privacy-of-consumer-financial-information-requirements-for-insurance;* SEC Final Privacy Rule, 65 FR 40333 (June 29, 2000) available at *https://www.federalregister.gov/documents/2000/06/29/00-16269/privacy-of-consumer-financial-information-regulation-s-p;* CFTC Final Privacy Rule, 66 FR 21235 (Apr. 27, 2001) available at *https://www.federalregister.gov/documents/2001/04/27/01-10398/privacy-of-consumer-financial-information.*

[4] Joint Model Form, 74 FR 62889 (Dec. 1, 2009) available at *https://www.federalregister.gov/documents/2009/12/01/E9-27882/final-model-privacy-form-under-the-gramm-leach-bliley-act; see also* 16 CFR 313.2, 16 CFR 313.4 through 313.9.

[5] Public Law 111–203, 124 Stat. 1376 (2010).

[6] Interim Final Rule for Regulation P, 76 FR 79025 (Dec. 21, 2011) available at *https://www.federalregister.gov/documents/2011/12/21/2011-31729/privacy-of-consumer-financial-information-regulation-p.*

[7] 12 U.S.C. 5519. The FTC retained rulemaking jurisdiction as to motor vehicle dealers that are predominantly engaged in the sale and servicing or the leasing and servicing of motor vehicles, excluding those dealers that directly extend credit to consumers and do not routinely assign the extensions of credit to an unaffiliated third party. For ease of reference, covered motor vehicle dealers are referenced herein as ''motor vehicle dealers.''

[8] Rescission of Rules, 77 FR 22200, 22201 (Apr. 13, 2012) available at *https://www.federalregister.gov/documents/2012/04/13/2012-8748/rescission-of-rules* (also rescinding those regulations for which rulemaking authority was transferred to the CFPB under the Dodd-Frank Act).

[9] 15 U.S.C. 6805(a).

[10] 15 U.S.C. 6804, 6809; 12 U.S.C. 1843(k)(4); 12 CFR 1016.1(b).

[11] *See* 15 U.S.C. 6804(a)(2).

[12] Section 75001, Public Law 114–94, 129 Stat. 1312, 1787 (2015).

provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers.

B. The Privacy Notice Requirements

As noted, the current Privacy Rule, as modified after Congress enacted the Dodd-Frank Act, requires motor vehicle dealers provide consumers with notices describing their privacy policies. Specifically, it requires covered entities to provide an initial notice of these policies,[13] and then ''provide a clear and conspicuous notice to customers that accurately reflects [their] privacy policies and practices not less than annually during the continuation of the customer relationship.'' [14]

The rule requires that initial and annual notices inform customers of their right to opt out of the sharing of nonpublic personal information with some types of nonaffiliated third parties.[15] For example, a customer has the right to opt out of allowing a motor vehicle dealer to sell her name and address to a nonaffiliated auto insurance company.[16] On the other hand, a motor vehicle dealer is not required to allow consumers to opt out of the dealer's sharing involving third-party service providers, joint marketing arrangements, maintenance and servicing of accounts, securitization, law enforcement and compliance, reporting to consumer reporting agencies, and certain other specified activities.[17] Accordingly, if a motor vehicle dealer limits its sharing to uses that do not trigger opt-out rights, it may provide an annual privacy notice to its customers that does not include information regarding opt-out rights.

Motor vehicle dealers also may include in the annual privacy notice information about certain consumer opt-out rights related to affiliate sharing under the Fair Credit Reporting Act (''FCRA''). First, section 603(d)(2)(A)(iii) of the FCRA allows the sharing of a consumer's information among affiliates, but only if the consumer is notified of such sharing and is given an opportunity to opt out.[18] Section 503(c)(4) of the GLBA and the Privacy Rule generally require motor vehicle dealers to incorporate any notifications and opt-out disclosures provided pursuant to section 603(d)(2)(A)(iii) of the FCRA into their initial and annual privacy notices.[19]

In addition, section 624 of the FCRA and the FTC's Affiliate Marketing Rule [20] provide that an affiliate of a motor vehicle dealer that receives certain information about a consumer from the dealer may not use that information for marketing purposes, unless the consumer is provided with an opportunity to opt out of that use.[21] This requirement governs the use of information by an affiliate, not the sharing of information among affiliates, and thus is distinct from the affiliate sharing opt-out discussed above. The Affiliate Marketing Rule permits (but does not require) motor vehicle dealers to incorporate any opt-out disclosures provided under section 624 of the FCRA and the Affiliate Marketing Rule into the initial and annual privacy notices required by the GLBA.[22]

Finally, § 313.6(a)(8) of the Privacy Rule requires the initial and annual notices briefly describe how motor vehicle dealers protect the nonpublic personal information they collect and maintain.[23]

II. Revision of the Privacy Rule

On April 4, 2019, the Commission issued a notice of proposed rulemaking [24] setting forth amendments to the Privacy Rule (the ''Proposed Amendments'') proposing three types of changes to the Privacy Rule: (1) Technical changes to the rule to correspond to the reduced scope of the rule due to Dodd-Frank Act changes, which primarily consist of removing references that do not apply to motor vehicle dealers; (2) modifications to the annual privacy notice requirements to reflect the changes made to the GLBA by the FAST Act; and (3) a modification to the scope and definition of ''financial institution'' to include entities engaged in activities incidental to financial activities, which would bring the rule into accord with the CFPB's Regulation P. The Commission received four comments related to the proposed amendments, to which it responds below.[25]

A. Technical Changes To Correspond to Statutory Changes Resulting From the Dodd-Frank Act

(1) Section 313.1(b)

The proposed amendment to § 313.1(b) narrowed the description of the scope of the Privacy Rule to those entities set forth in the Dodd-Frank Act: [26] Those predominantly engaged in the sale and servicing of motor vehicles or the leasing and servicing of motor vehicles, excluding those dealers that directly extend credit to consumers and do not routinely assign the extensions of credit to an unaffiliated third party. It also removed the reference in the rule's scope to ''other persons,'' because the Commission no longer has rulemaking authority for the Privacy Rule over ''other persons.'' Finally, the Proposed Amendments eliminated from § 313.1(b) the note indicating (1) the Privacy Rule does not modify, limit, or supersede the standards under the Health Insurance Portability and Accountability Act of 1996 (''HIPAA''), and (2) if a financial institution that is an institution of higher education is in compliance with the Federal Educational Rights and Privacy Act (''FERPA'') and its implementing regulations, such institution shall be deemed in compliance with the Privacy Rule.

The Commission received two comments on these proposed changes. One commenter asked why the rule would not cover dealers that directly extend credit to consumers.[27] In response, the Commission notes the Dodd-Frank Act excludes these dealers from the Commission's rulemaking authority under the GLBA. The Commission continues to have enforcement authority over these dealers under Regulation P.

Another commenter, the National Association of Automobile Dealers

[13] 15 U.S.C. 6803; 16 CFR 313.4.

[14] 15 U.S.C. 6803; 16 CFR 313.5(a)(1).

[15] 15 U.S.C. 6802; 16 CFR 313.6(a)(6).

[16] 16 CFR 313.10(a).

[17] 15 U.S.C. 6802(b)(2), 6802(e); 16 CFR 313.13–313.15.

[18] 15 U.S.C. 1681a(d)(2)(A)(iii).

[19] 15 U.S.C. 6803(c)(4); 16 CFR 313.6(a)(7).

[20] 16 CFR 680.1–680.28.

[21] 15 U.S.C. 1681s-3. The FTC's Affiliate Marketing Rule applies to motor vehicle dealers. *See* 77 FR 22201. The FTC also enforces the CFPB's Regulation V's Affiliate Marketing Rule, 12 CFR part 1022, subpart C, for other entities over which the FTC has enforcement authority under the FCRA.

[22] 16 CFR 680.23(b).

[23] 16 CFR 313.6(a)(8).

[24] On June 24, 2015, the Commission published a notice of proposed rulemaking (''2015 NPRM'') proposing revisions to the Privacy Rule. NPRM, 80 FR 36267 (June 24, 2015) available at *https://www.federalregister.gov/documents/2015/06/24/2015-14328/amendment-to-the-privacy-of-consumer-financial-information-rule-under-the-gramm-leach-bliley-act.* First, the Commission proposed a number of changes to comport with the Dodd-Frank Act revision of GLBA, which transferred rulemaking authority for most financial institutions to the CFPB. The Commission also proposed amending the rule to allow motor vehicle dealers to notify their customers that a privacy notice is available online, under circumstances identical to those that had been adopted by the CFPB. Final Rule, 79 FR 64057 (Oct. 28, 2014) available at *https://www.federalregister.gov/documents/2014/10/28/2014-25299/amendment-to-the-annual-privacy-notice-requirement-under-the-gramm-leach-bliley-act-regulation-p.* The passage of the FAST Act rendered the Commission's proposed changes to the Privacy Rule moot because those changes, if adopted, would have been in conflict with the revised statute.

[25] The Commission also received three comments that related to the Safeguards Rule (16 CFR part 314). Those comments are addressed in the final Safeguards Rule published elsewhere in this issue of the **Federal Register**.

[26] 12 U.S.C. 5519.

[27] Yuxiang Hao (comment 4).

(''NADA''), supported eliminating the references to HIPAA and FERPA, agreeing that these provisions would not apply to automobile dealers.[28] Given that it received no other substantive comments, the Commission adopts the changes as proposed.

(2) Section 313.3

To help companies understand whether and how the rule applies to them, the current rule includes examples of financial institutions in § 313.3(k)(2), examples of consumers in § 313.3(e)(2), examples of what would constitute establishing a customer relationship in § 313.3(i)(2)(i), and examples of what is not a customer relationship in § 313.2(i)(2)(ii). The Proposed Amendments to § 313.3 removed examples not likely to apply in the context of motor vehicle dealers.

NADA was the only commenter who opined on this issue. It agreed the examples proposed for removal do not apply to motor vehicle dealers and supported their deletion. Accordingly, the final rule deletes these examples as proposed.

NADA advocated for removal or modification of additional terms or examples that it asserted would not apply in the motor vehicle context. The Commission declines to make the changes suggested by NADA, for the reasons described below.

a. Loans

NADA argued the examples in the final rule should not include the word ''loans'' because motor vehicle dealers ''do not generally issue 'loans,''' but instead provide financing assistance or enter into retail installment sale contracts or leases. NADA suggested the term ''loan'' be replaced with ''financing,'' or ''finance or lease contract.'' [29] The Commission declines to modify existing examples in this manner. It believes the Privacy Rule should be substantively identical to Regulation P so financial institutions within the Commission's enforcement authority are subject to the same requirements, regardless of whether they are subject to Regulation P or the Privacy Rule. Although the Commission recognizes some examples it has retained may not apply well to the motor vehicle context,[30] changing the language of an example, as opposed to completely removing it, could be read as a change to the substance of the rule. Accordingly, the Commission declines to change an existing term in the final rule.[31]

b. Examples of Continuing Relationships

NADA suggested removing the term ''investment accounts'' from the example of a continuing relationship § 313.3(i)(2)(i)(A), as such accounts are not offered by motor vehicle dealers. As discussed above, however, the Commission declines to modify existing examples and does not adopt this change in the final rule. NADA also took issue with § 313.3(i)(2)(i)(D), which states a consumer has a continuing relationship with a financial institution when the consumer enters into an ''agreement or understanding'' with the financial institution in which the financial institution undertakes ''to arrange credit to purchase a vehicle for the consumer.'' NADA noted when motor vehicle dealers arrange credit for a consumer, they then assign that agreement to a third party and do not continue the relationship with the consumer.

Although motor vehicle dealers may transfer the credit agreement to another financial institution, a continuing relationship is formed by the agreement and persists for as long as the motor vehicle dealer retains the agreement. The continuing relationship between the motor vehicle dealer and the consumer will end upon the transfer of the agreement, but until that transfer occurs, the consumer is the motor vehicle dealer's customer for purposes of the Privacy Rule. Accordingly, the Commission declines to remove this example from the final rule.

NADA also argued the term ''understanding'' in paragraph (i)(2)(i)(D) is confusing because it is not clear what an ''understanding'' would mean in this context, and motor vehicle dealers do not enter into informal relationships to arrange credit for consumers. The Commission believes, however, while informal understandings may be unusual for motor vehicle dealers, it is possible some dealers may engage in such practices and the example should continue to make clear that such arrangements create continuing relationships. In addition, as discussed above, the Commission declines to change the language of examples retained in the final rule.

c. Examples of No Continuing Relationships

NADA argued the example in § 313.3(i)(2)(ii)(A) does not apply to motor vehicle dealers. This example states no continuing relationship is created when a ''consumer obtains a financial product or service from [the financial institution] only in isolated transactions, such as cashing a check with [the financial institution] or making a wire transfer through'' the financial institution. NADA argued motor vehicle dealers generally do not engage in these activities, and while ''it is theoretically possible that a dealer somewhere may offer, under unique circumstances, to cash a check for a customer, [NADA] is not aware of that service being offered by dealers and the possibility is attenuated at best.'' [32] The Commission does not agree that this example should be removed. Although check cashing and wire transfer transactions may be unlikely at motor vehicle dealerships, these are helpful examples of the types of isolated transactions that do not create an ongoing relationship and, even for motor vehicle dealers that do not engage in these particular activities, they illustrate the principle well. The final rule retains this example.

NADA also questioned the inclusion of § 313.3(i)(2)(ii)(C), which states a continuing relationship is not created when a ''consumer obtains one-time personal appraisal services from'' the financial institution. NADA asked whether this would apply when a motor vehicle dealer appraises a consumer's used vehicle for trade-in value. The Commission believes that is precisely the type of appraisal suggested by the example. NADA also questioned how ''such appraisal activity by a dealer could, as an initial matter be deemed to create a Customer relationship.'' [33] The Commission believes, however, negative examples are useful to clarify the definition and, therefore, the final rule retains this example.

[28] National Automobile Dealers Association (comment 9), at 3–4.

[29] NADA (comment 9), at 4.

[30] The Commission notes that while the term ''loan'' may not be applicable to all motor vehicle dealers' transactions with their customers, most extensions of credit or the arranging of credit will play the same role as loans for purposes of this amendment, and dealers may generally apply these examples accordingly.

[31] The Proposed Amendments did modify existing examples in two instances. In §§ 313.3(i)(2)(i)(A) and 313.5(b)(2)(ii), references to mortgage loans were removed. Although the Commission continues to believe that mortgage loans are unlikely to be involved in the motor vehicle dealer context, as discussed above, the Commission recognizes that there is value in maintaining consistency with Regulation P, and that particular examples provided may not be applicable to every type of financial institution's activities. Accordingly, the final rule retains the references to mortgage loans in these provisions.

[32] NADA (comment 9), at 5.

[33] NADA (comment 9), at 5.

B. Modifications to the Annual Privacy Notice To Reflect Statutory Changes Resulting From the FAST Act

The Commission also proposed changing the Privacy Rule provisions governing how motor vehicle dealers should deliver annual privacy notices.

Section 313.5(e)

The proposed change to § 313.5(a)(1) added a statement that § 313.5(e) provides an exception to the general rule requiring the delivery of annual notices. Section 313.5(e) in turn sets forth the exception, which was taken from the FAST Act, and adopted by the CFPB in its amendments to Regulation P.[34] It stated the annual notice need not be provided if (1) the financial institution has shared nonpublic personal information only in accordance with the provisions of §§ 313.13, 313.14, and 313.15, none of which require an opt-out opportunity be provided to customers; and (2) the financial institution's disclosure policies and practices remain unchanged from the most recent privacy notice.

Proposed § 313.5(e)(2) set forth the timing for resuming delivery of the annual notice if a financial institution no longer met requirements for the exception.

The Commission received no comments on the substance of this paragraph and adopts it without modification.[35]

C. Modifications to Scope and Definitions To Bring the Rule Into Accord With Regulation P

The Proposed Amendments changed the scope of the Privacy Rule and its definition of a ''financial institution'' in order to bring the Commission's rule into accord with Regulation P. As explained in the NPRM, when first promulgating the Privacy Rule, the Commission determined companies engaged in activities ''incidental to financial activities'' would not be considered ''financial institutions.'' [36] The Commission was the only agency to adopt this restrictive definition in its Privacy Rule, while the other agencies included incidental activities. In addition, the Commission decided activities determined to be financial in nature after the enactment of the GLBA would not be automatically included in its Privacy Rule; rather, the Commission would have to take additional action to include them.[37] The effect of these two decisions was to limit the activities covered by the Commission's rules to those set out in 12 CFR 225.28 as it existed in 1999, and to exclude any activities later determined by the Fed to be financial activities or incidental to those activities.[38]

The Commission proposed modifying the definition of ''financial institution'' to harmonize the Privacy Rule with other agencies' rules. The Commission proposed to amend § 313.1(b) to include companies that engage in activities financial in nature or incidental to such financial activities in the scope of the rule. Likewise, it proposed amending the definition of ''financial institution'' in § 313.3(k), to include any institution the business of which is engaging in an activity that is financial in nature or incidental to such financial activities. The effect of this proposed amendment would be to cause ''finders'' to be included in this definition, thereby bringing the Privacy Rule into harmony with the scope of entities covered by other agencies under Regulation P.

The Commission received only two comments that addressed this proposed change in the Privacy Rule.[39] NADA asked whether the proposed rule would apply to finders acting for a motor vehicle dealer.[40] As discussed above, the Commission's Privacy Rule applies only to motor vehicle dealers and so would apply only to finders that are also motor vehicle dealers. If a finder is not itself a motor vehicle dealer then the rule does not apply, even if the finder is acting to connect motor vehicle dealers with potential customers. Given that this scenario is unlikely, modifying the definition of ''financial institution'' for purposes of the Privacy Rule has little practical effect. Nevertheless, the Commission is modifying the definition for purposes of consistency with Regulation P and the Safeguards Rule.

An individual consumer asked how often an entity must engage in an incidental activity to be considered a financial institution.[41] As with other financial activities under the existing rule, an entity is a financial institution only if it is ''significantly engaged'' in the incidental activities.

The Commission adopts the proposed amendment without change.

Section 313.15(a)(4)

Finally, the Commission proposed to amend § 313.15(a)(4) to add the CFPB to the list of law enforcement agencies to which financial institutions are permitted to share information to the extent permitted by law. The Commission received no comments on this change and adopts it as proposed.

Section 313.18

Section 313.18 set forth the effective date for the rule and prescribed requirements for institutions' compliance with the rule as to customers who were already customers at the time the rule was first promulgated. The relevant dates have long since passed. Section 313.18(a)(2) also provided an exception, stating this ''part is not effective as to any institution that is significantly engaged in activities that the Federal Reserve Board determines, after November 12, 1999 . . . are activities that a financial holding company may engage in, until the Commission so determines.'' As discussed above, the Commission has determined herein that this rule applies to financial institutions that engage in activities financial in nature or incidental to such financial activities, including entities significantly engaged in activities the Federal Reserve Board has determined, after November 12, 1999, are activities a financial holding company may engage in. Accordingly, the final rule removes § 313.18 in its entirety.

III. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (''PRA''),[42] Federal agencies are generally required to seek Office of Management and Budget (''OMB'') approval for information collection requirements prior to implementation. Under the PRA, the Commission may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection, unless the information collection displays a valid control number assigned by OMB.

This amendment modifies 16 CFR part 313. The collections of information related to the Privacy Rule and the

[34] *See* Final Rule, 83 FR 40945 (August 17, 2018) available at *https://www.federalregister.gov/documents/2018/08/17/2018-17572/amendment-to-the-annual-privacy-notice-requirement-under-the-gramm-leach-bliley-act-regulation-p.*

[35] As discussed above, NADA argued that the word ''loan'' should be replaced with ''retail installment sale contract.'' As discussed above, the Commission wishes the remaining examples in the final rule to be identical to those found in Regulation P and declines to make these changes. In addition, the National Independent Automobile Dealers Association noted that most dealers will not be required to provide annual notices because of their lack of ongoing relationships with their consumers, but supported the amendments in general.

[36] *See* 16 CFR 313.3(k); *see also* 65 FR 33654.

[37] 65 FR 33654 n.23.

[38] *Id.*

[39] Several other entities commented on the expansion of the definition of a ''financial institution'' in the Safeguards Rule. These comments are addressed in the discussion of the final Safeguards Rule, published elsewhere in this issue of the **Federal Register**.

[40] NADA (comment 9), at 7–8.

[41] Qiyi Hu (comment 5).

[42] 44 U.S.C. 3501 *et seq.*

FAST Act statutory exceptions to the rule's annual notice requirement have been previously reviewed and approved by OMB in accordance with the PRA.[43]

Under the existing clearance, the FTC has attributed to itself the estimated burden regarding all motor vehicle dealers and shares equally the remaining estimated PRA burden with the CFPB for other types of financial institutions for which both agencies have enforcement authority regarding the GLBA Privacy Rule.[44]

The amendments do not modify or add to information collection requirements previously approved by OMB. First, the Commission anticipates the expansion of the definition of ''financial institution'' to include entities engaged in activities incidental to financial activities will have little to no effect. It is not clear any finders that are also motor vehicle dealers are not already covered by the rule through their activities as motor vehicle dealers.

Second, the removal of certain examples provided in the rule that are not applicable to motor vehicle dealers will have no impact on existing information collection requirements.

Therefore, the Commission does not believe the amendments substantially or materially modify any ''collections of information'' as defined by the PRA.

The Commission sought comment on whether there are any finders in existence that would be covered by the proposed rule and are not covered by the current rule. The Commission received no comments that suggested such entities exist.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.[45] The Commission does not believe this amendment to the Privacy Rule has the threshold impact on small entities. First, most of the changes effectuate statutory changes from the Dodd-Frank Act and the FAST Act. Second, the Commission does not expect the amendment to impose costs on small motor vehicle dealers because the amendments are primarily for clarification purposes and should not result in any increased burden on any motor vehicle dealer. Thus, a small entity that complies with current law need not take any different or additional action under the final rule.

Accordingly, the Commission believes the rule will not have a significant economic impact on small entities. The final rule would add requirements only to motor vehicle dealers that function as finders and do not already engage in other financial activities that would cause them to be financial institutions under the rule. The Commission has not identified any such entities. Therefore, the Commission certifies the rule will not have a significant economic impact on a substantial number of small businesses.

In this document, the Commission adopts the amendments proposed in its NPRM with only minimal modifications. In its Initial Regulatory Flexibility Analysis (''IRFA''), the Commission determined the proposed rule would not have a significant impact on small entities because there were no small businesses that were being subjected to new burdens as a result of the amendments. Although the Commission certifies under the RFA that the rule will not have a significant impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration, the Commission nonetheless has determined publishing a final regulatory flexibility analysis (''FRFA'') is appropriate to ensure the impact of the rule is fully addressed. Therefore, the Commission has prepared the following analysis:

1. Need for and Objectives of the Final Rule

To address the Dodd-Frank Act and FAST Act changes the amendments change the Privacy Rule's scope and definition of ''financial institution''; change the annual notice requirement; and remove certain examples provided in the rule that are not applicable to motor vehicle dealers. With this action, the Commission makes the current, narrow scope of the rule clearer. Additionally, the modification of the definition of ''financial institution'' to cover motor vehicle dealers engaged in ''activities incidental to financial activities'' harmonizes the Privacy Rule with other agencies' rules.

2. Significant Issues Raised in Public Comments in Response to the IRFA

The Commission did not receive any comments that addressed the burden on small entities. In addition, the Commission did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').

3. Estimate of Number of Small Entities To Which the Final Rule Will Apply

The Commission anticipates many covered motor vehicle dealers may qualify as small businesses according to the applicable SBA size standards.[46] As explained in the IRFA, however, determining a precise estimate of the number of small entities—including newly covered entities under the modified definition of financial institution—is not readily feasible. No commenters addressed this issue. Nonetheless, as discussed above, these amendments will not add any additional burdens on any covered small businesses.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments do not impose any new or substantively revised ''collections of information,'' as defined by the PRA.

5. Description of Steps Taken To Minimize Significant Economic Impact, if Any, on Small Entities, Including Alternatives

The Commission did not propose any specific small entity exemption or other significant alternatives because the amendment is not expected to increase reporting requirements and will not impose any new requirements or compliance costs. The Commission anticipates the amendments will reduce the burden for many covered entities associated with the Privacy Rule annual notice. The amendments retain the flexibility already present in the existing rule, which allows notices to be provided in a variety of ways, including electronically in some circumstances. As to the core requirements of the rule, they come from GLBA itself, as amended by the Dodd-Frank and the FAST Act. The statute prescribes the definition of financial institutions to be covered by the rule and sets forth the specific requirements, which the Commission cannot modify to ease burdens on small entities. Therefore, the Commission does not believe any

[43] The OMB Control Number is 3084–0121.

[44] PRA Notice, 82 FR 48081 (Oct. 16, 2017) available at *https://www.federalregister.gov/documents/2017/10/16/2017-22334/agency-information-collection-activities-submission-for-omb-review-comment-request.*

[45] 5 U.S.C. 603–605.

[46] Table of Small Bus. Size Standards Matched to North American Indus. Classification System Codes, 13 CFR 121.201 (available at: *https://www.sba.gov/document/support--table-size-standards*), updated Aug. 19, 2019. For example, used car dealers are classified as NAICS 441120 and new car dealers as NAICS 441110. Under those standards, the SBA would classify as small businesses independent used car dealers having annual receipts of less than $27 million and new car dealers having fewer than 200 employees each.

alternatives for small entities are required or appropriate.

V. Other Matters

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Part 313

Consumer protection, Credit, Data protection, Privacy, Trade practices.

For the reasons stated above, the Federal Trade Commission amends 16 CFR part 313 as follows:

PART 313—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 1. The authority citation for part 313 is revised to read as follows:

Authority: 15 U.S.C. 6801 *et seq.,* 12 U.S.C. 5519.

■ 2. Amend § 313.1 by revising paragraph (b) to read as follows:

§ 313.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to those ''financial institutions'' over which the Federal Trade Commission (''Commission'') has rulemaking authority pursuant to section 504(a)(1)(C) of the Gramm-Leach-Bliley Act. An entity is a ''financial institution'' if its business is engaging in an activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), which incorporates activities enumerated by the Federal Reserve Board in 12 CFR 225.28 and 225.86. The ''financial institutions'' subject to the Commission's rulemaking authority are any persons described in 12 U.S.C. 5519 that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. They are referred to in this part as ''You.'' Excluded from the coverage of this part are motor vehicle dealers described in 12 U.S.C. 5519(b) that directly extend to consumers retail credit or retail leases involving motor vehicles in which the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source.

■ 3. Amend § 313.3 by revising paragraphs (e), (i), (j), (k), and (q) to read as follows:

§ 313.3 Definitions.

* * * * *

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) For example:

(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(v) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

* * * * *

(i)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) For example:

(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(E) Enters into a lease of personal property on a non-operating basis with you; or

(F) Has a loan for which you own the servicing rights.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as cashing a check with you or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) The consumer obtains one-time personal appraisal services from you.

(j) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The National Credit Union Administration Board; and

(5) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in an activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). An institution that is significantly engaged in financial activities, or significantly engaged in activities incidental to such financial activities, is a financial institution.

(2) An example of a financial institution is an automobile dealership that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(3) *Financial institution* does not include entities that engage in financial activities but that are not significantly engaged in those financial activities.

(4) An example of entities that are not significantly engaged in financial

activities is a motor vehicle dealer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

* * * * *

(q) *You* includes each ''financial institution'' over which the Commission has rulemaking authority pursuant to section 504(a)(1)(C) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)(C)).

■ 4. Amend § 313.4 by adding a heading for paragraph (c)(3) and revising paragraphs (c)(3)(i) and (e) to read as follows:

§ 313.4 Initial privacy notice to consumers required.

* * * * *

(c) * * *

(3) *Examples*—(i) *Examples of establishing a customer relationship.* You establish a customer relationship when the consumer:

(A) Executes the contract to obtain credit from you or purchase insurance from you; or

(B) Executes the lease for personal property with you.

* * * * *

(e) *Exceptions to allow subsequent delivery of notice*—(1) *General.* You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and customer agrees to receive the notice at a later time.

(2) *Examples of exceptions*—(i) *Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when you and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service.

(ii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as through a website.

* * * * *

■ 5. Amend § 313.5 by adding a heading for paragraph (a), revising paragraphs (a)(1) and (b)(2), and adding paragraph (e) to read as follows:

§ 313.5 Annual privacy notice to customers required.

(a) *In general*—(1) *General rule.* Except as provided by paragraph (e) of this section, you must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

* * * * *

(b) * * *

(2) *Examples.* Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights.

(ii) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes.

(iii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

* * * * *

(e) *Exception to annual privacy notice requirement*—(1) *When exception available.* You are not required to deliver an annual privacy notice if you:

(i) Provide nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of § 313.13, § 313.14, or § 313.15; and

(ii) Have not changed your policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 313.6(a)(2) through (5) and (9) in the most recent privacy notice provided pursuant to this part.

(2) *Delivery of annual privacy notice after financial institution no longer meets requirements for exception.* If you have been excepted from delivering an annual privacy notice pursuant to paragraph (e)(1) of this section and change your policies or practices in such a way that you no longer meet the requirements for that exception, you must comply with paragraph (e)(2)(i) or (ii) of this section, as applicable.

(i) *Changes preceded by a revised privacy notice.* If you no longer meet the requirements of paragraph (e)(1) of this section because you change your policies or practices in such a way that § 313.8 requires you to provide a revised privacy notice, you must provide an annual privacy notice in accordance with the timing requirement in paragraph (a) of this section, treating the revised privacy notice as an initial privacy notice.

(ii) *Changes not preceded by a revised privacy notice.* If you no longer meet the requirements of paragraph (e)(1) of this section because you change your policies or practices in such a way that § 313.8 does not require you to provide a revised privacy notice, you must provide an annual privacy notice within 100 days of the change in your policies or practices that causes you to no longer meet the requirement of paragraph (e)(1).

(iii) *Examples.* (A) You change your policies and practices in such a way that you no longer meet the requirements of paragraph (e)(1) of this section effective April 1 of year 1. Assuming you define the 12-consecutive-month period pursuant to paragraph (a) of this section as a calendar year, if you were required to provide a revised privacy notice under § 313.8 and you provided that notice on March 1 of year 1, you must provide an annual privacy notice by December 31 of year 2. If you were not required to provide a revised privacy notice under § 313.8, you must provide an annual privacy notice by July 9 of year 1.

(B) You change your policies and practices in such a way that you no longer meet the requirements of paragraph (e)(1) of this section, and so provide an annual notice to your customers. After providing the annual notice to your customers, you once again meet the requirements of paragraph (e)(1) of this section for an exception to the annual notice requirement. You do not need to provide additional annual notice to your customers until such time as you no longer meet the requirements of paragraph (e)(1) of this section.

■ 6. Amend § 313.15 by revising paragraph (a)(4) to read as follows:

§ 313.15 Other exceptions to notice and opt out requirements.

(a) * * *

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law

enforcement agencies (including the Consumer Financial Protection Bureau, a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

* * * * *

§ 313.18 [Removed]

■ 7. Remove § 313.18.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2021–25735 Filed 12–8–21; 8:45 am]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 232, and 249

[Release No. 34–93701; IC–34431; File No. S7–03–21]

RIN 3235–AM84

Holding Foreign Companies Accountable Act Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to finalize interim final rules that revised Forms 20–F, 40–F, 10–K, and N–CSR to implement the disclosure and submission requirements of the Holding Foreign Companies Accountable Act (''HFCA Act''). The final amendments apply to registrants that the Securities and Exchange Commission (''Commission'') identifies as having filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board (''PCAOB'') is unable to inspect or investigate completely because of a position taken by an authority in that jurisdiction. Consistent with the HFCA Act, the amendments require the submission of documentation to the Commission establishing that such a registrant is not owned or controlled by a governmental entity in that foreign jurisdiction and also require disclosure in a foreign issuer's annual report regarding the audit arrangements of, and governmental influence on, such registrants.

DATES: The amendments are effective on January 10, 2022, except for the addition of § 232.405(c)(1)(iii)(C), which is effective from January 10, 2022, until July 1, 2023.

FOR FURTHER INFORMATION CONTACT: Luna Bloom, Office Chief, at (202) 551–3430, in the Office of Rulemaking, Division of Corporation Finance; Theodore Venuti, Assistant Director, at (202) 551–5658, in the Office of Market Supervision, Division of Trading and Markets; or Blair Burnett, Senior Counsel, at (202) 551–6792, in the Investment Company Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules and forms.

Commission reference	CFR citation (17 CFR)
Regulation S–T:	
Rule 405	§ 232.405.
Securities Exchange Act of 1934 (Exchange Act):[1]	
Form 20–F	§ 249.220f.
Form 40–F	§ 249.240f.
Form 10–K	§ 249.310.
Exchange Act and Investment Company Act of 1940 (Investment Company Act):[2]	
Form N–CSR	§§ 249.331 and 274.128.

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I. Introduction

On March 18, 2021,[3] the Commission adopted interim final amendments to Form 10–K, Form 20–F, Form 40–F, and Form N–CSR to implement the disclosure and submission requirements of Sections 2 and 3 of the HFCA Act,[4] which became law on December 18, 2020. Section 2 of the HFCA Act amended Section 104 of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'') [5] by adding Section 104(i) to the Sarbanes-Oxley Act. Section 104(i)(2) of

[1] 15 U.S.C. 78a *et seq.*

[2] 15 U.S.C. 80a–1 *et seq.*

[3] *See Holding Foreign Companies Accountable Act Disclosure,* Release No. 34–91364 (Mar. 18, 2021) [86 FR 17528 (Apr. 5, 2021)] (''Interim Final Release'').

[4] Public Law 116–222, 134 Stat. 1063 (Dec. 18, 2020).

[5] 15 U.S.C. 7214 (as amended by Pub. L. 116–222).

the Sarbanes-Oxley Act requires the Commission to identify each ''covered issuer'' [6] that has retained a registered public accounting firm [7] to issue an audit report [8] where that registered public accounting firm has a branch or office [9] that:

- Is located in a foreign jurisdiction; and
- The PCAOB has determined that it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction.[10]

Once identified, Section 104(i)(2)(B) of the Sarbanes-Oxley Act requires these covered issuers, which we refer to as ''Commission-Identified Issuers'' in this release, to submit documentation to the Commission establishing that they are not owned or controlled by a governmental entity in that foreign jurisdiction.[11] Additionally, Section 3 of the HFCA Act lists additional disclosure requirements for Commission-Identified Issuers that are ''foreign issuers'' [12] (''Commission-Identified Foreign Issuers'').

We received a number of comment letters in response to the interim final amendments. While several commenters generally supported them,[13] some provided specific suggestions on how to improve them or otherwise implement the HFCA Act,[14] and others opposed [15] the interim final amendments. Generally, commenters supporting the interim final amendments stated that the amendments effectively provided for timely implementation of the HFCA Act [16] and also informed investors about the level of ownership and control the Chinese Government has in listed companies.[17] Additionally, commenters supporting the interim final amendments asserted that they agreed with the objective of the HFCA Act and were concerned about the lack of transparency into Chinese companies.[18]

On the other hand, commenters opposing the amendments stated that the amendments were repetitive of disclosure that is already provided and would result in unnecessary compliance costs,[19] were unfair to Chinese registrants,[20] may bring adverse effects to the interests of global investors in Commission-Identified Issuers,[21] and did not account for regulations in other jurisdictions.[22] Some of these commenters also argued that any conflicts of relevant laws in different jurisdictions that inhibit PCAOB inspection should be resolved through the cooperation of regulators from the different jurisdictions.[23] Many of these comments reflect general opposition to the design and operation of the HFCA Act itself. Where commenters addressed aspects of the statute that Congress left to the Commission to implement, we have responded to those comments below, in our discussion of the final amendments.

II. Discussion of Amendments

A. Documentation Submission Requirements

1. Interim Final Amendments

As discussed above, Section 2 of the HFCA Act amended Section 104(i)(2) of the Sarbanes-Oxley Act to require any Commission-Identified Issuer to submit to the Commission documentation establishing that the issuer is not owned or controlled by a governmental entity in the relevant foreign jurisdiction.[24] The Commission amended Form 10–K, Form 20–F, Form 40–F, and Form N–CSR to implement this provision. The submission requirement applies to all Commission-Identified Issuers. The interim final amendments required this documentation to be submitted electronically to the Commission on a supplemental basis [25] through the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system on or

[6] *See* Section 104(i)(1)(A) of the Sarbanes-Oxley Act (defining a ''covered issuer'' as an issuer that is required to file reports under Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act). In this release, we refer to issuers filing Exchange Act reports as ''registrants.'' We use the term ''issuers'' when referring to the HFCA Act, but refer to ''registrants'' when discussing the forms and form requirements.

[7] We use the terms ''registered public accounting firm'' and ''auditor'' interchangeably to mean public accounting firms that, among other things, prepare accountant's reports on U.S. public companies and are required to register with the PCAOB. The term ''accountant's report'' is defined in 17 CFR 210.1–02(a)(1) (Rule 1–02(a)(1) of Regulation S–X), with regard to financial statements, as a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) that the accountant has made and sets forth that accountant's opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed.

[8] The HFCA Act uses the term ''audit report.'' As noted above, *see supra* note 7, for the purposes of this release and the final amendments, the term ''audit report'' has the same meaning as ''accountants' report'' in Rule 1–02(a)(1) of Regulation S–X.

[9] Where a branch or office of an international firm network is a separate legal entity from the U.S.-based or international firm network, and that branch or office signs the audit report in its own name, the Commission will look to the PCAOB determination for that branch or office and not apply that determination to the U.S.-based or other branches or offices of that firm network that are not based in the PCAOB-identified foreign jurisdiction.

[10] On September 22, 2021, the PCAOB adopted PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act,* which was approved by the Commission on November 4, 2021. *See Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act,* Release No. 34–93527 (Nov. 4, 2021) [86 FR 62581 (Nov. 10, 2021]. The PCAOB Rule 6100 establishes a framework for the PCAOB to make its determinations required by the HFCA Act. Specifically, PCAOB Rule 6100 establishes the manner of the PCAOB's determinations; the factors the PCAOB will evaluate and the documents and information it will consider when assessing whether a determination is warranted; the form, public availability, effective date, and duration of such determinations; and the process by which the PCAOB will reaffirm, modify, or vacate any such determinations. In this release, we refer to a registered public accounting firm that the PCAOB has determined that it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction as a ''PCAOB-Identified Firm.''

[11] In addition to this submission requirement, pursuant to Section 104(i)(3) of the Sarbanes-Oxley Act, as added by Section 2 of the HFCA Act, if an issuer is a Commission-Identified Issuer for three consecutive years, the Commission must prohibit the securities of the issuer from being traded on a national securities exchange or through any other method that is within the jurisdiction of the Commission to regulate, including through ''over-the-counter'' trading. 15 U.S.C. 7214(i)(3).

[12] *See* 17 CFR 240.3b–4 (''Exchange Act Rule 3b–4''). Under Exchange Act Rule 3b–4, the term ''foreign issuer'' means any issuer that is a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

[13] *See* letters from American Securities Association (May 5, 2021) (''ASA''), Council of Institutional Investors (May 5, 2021) (''CII''), U.S. Chamber of Commerce (May 21, 2021) (''Chamber''), United States Senator Dan Sullivan *et al.* (Aug. 9, 2021) (''Sen. Sullivan *et al.*''), and United States Senator John Kennedy (Apr. 28, 2021) (''Sen. Kennedy'').

[14] *See* letters from ICI Global (May 5, 2021) (''ICI''), Jessica Kelly (Apr. 30, 2021) (''Kelly''), Professor Curtis J. Milhaupt and Professor Lauren Yu-Hsin Lin (Apr. 5, 2021) (''Profs. Milhaupt and Lin''), New York Stock Exchange LLC (May 12, 2021) (''NYSE''), and Professor Emmanuel T. De George *et al.* (May 4, 2021) (''U.S. Acctg. Academics'').

[15] *See* letters from Blank Rome LLP (May 5, 2021) (''Blank Rome''); China Petroleum & Chemical Corporation (Apr. 30, 2021) (''China Petroleum''); China Southern Airlines Company Limited (Apr. 30, 2021) (''China Southern''); Professor Jie *et al.* (May 3, 2021) (''Chinese Legal Academics''); Shanshan Xu (May 2, 2021) (''Xu''); and Yum China Holdings, Inc. (May 4, 2021) (''Yum'').

[16] *See, e.g.,* letter from ICI.

[17] *See, e.g.,* letter from ASA.

[18] *See, e.g.,* letter from Chamber.

[19] *See* letter from China Petroleum.

[20] *See* letters from Chinese Legal Academics and China Petroleum.

[21] *See* letters from Blank Rome, Chinese Legal Academics, China Southern, and Yum.

[22] *See* letters from China Southern and Xu.

[23] *See* letters from Blank Rome, Chinese Legal Academics, China Southern, China Petroleum, and Xu.

[24] *See* Section 104(i)(2)(A) of the Sarbanes-Oxley Act. The interim final amendments met the Section 104(i)(4) of the Sarbanes-Oxley Act mandate that the Commission adopt rules establishing the manner and form in which such submissions will be made no later than 90 days after enactment.

[25] For purposes of the interim final amendments, use of the term ''supplemental'' did not have the meaning of ''supplemental information'' in 17 CFR 240.12b–4. This is true for the final amendments we are adopting in this release as well.

before the due date of the relevant annual report form.

Although the interim final amendments prescribed the timing and means by which such submissions were made, neither they nor the HFCA Act specified the particular types of documentation that could or should be submitted for this purpose. Moreover, in the Interim Final Release, the Commission recognized that available documentation could vary depending upon the organizational structure and other factors specific to the registrant. Thus, registrants had flexibility under the interim final amendments to determine how best to satisfy this requirement.

2. Comments

One commenter recommended that registrants make the submission of documentation establishing that the issuer is not owned or controlled by a governmental entity in the foreign jurisdiction of the PCAOB-Identified Firm in the form of a certification, but did not support requiring the submission to be filed in a Form 8–K because it should not be classified as a ''material event'' and did not support requiring disclosure that a registrant is a Commission Identified issuer under Form 8–K.[26] This commenter suggested that making the submission publicly available or filed as an exhibit would exceed the actions authorized by the HFCA Act and indicated that registrants may wish to seek confidential treatment for some or all of the submission. The commenter also suggested that we establish a universal due date for the submission requirement that is later than the due date for the annual report to provide registrants additional time to prepare the submission and reduce the costs of compliance, and that we should not make the determinations of Commission-Identified Issuers more often than annually.

Additionally, the commenter recommended that a registrant retain flexibility over the type of documentation a Commission-Identified Issuer must submit to establish that it is not owned or controlled by a governmental entity in the foreign jurisdiction based on its facts and circumstances, but indicated that publication of non-exclusive methods to satisfy the requirement would be valuable. This commenter suggested potential non-exclusive methods to show there is no ownership or control, such as there has been no Schedule 13D or 13G filing by a government related entity in the foreign jurisdiction, there are no material contracts with a foreign governmental party, or there is no foreign government representative on the board.

Another commenter recommended additional guidance on the meaning of ''owned or controlled.'' [27] The commenter suggested that the amendments use the term ''significant influence'' under U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') and incorporate specific examples including: (1) Where a government entity or affiliate has 20 percent or greater ownership or voting interest; (2) existence and effect of potential voting rights that are currently exercisable or convertible; (3) when an entity is represented on the board of directors or equivalent governing body of the investee entity; and (4) an entity's participation in policy-making processes, including participation in decisions about dividends or other distributions.

3. Final Amendments

We are finalizing the interim final amendments with respect to the submission requirements without modification. The amendments require any Commission-Identified Issuer to submit to the Commission through EDGAR,[28] on or before the due date of the relevant annual report form, documentation establishing that the issuer is not owned or controlled by a governmental entity in the foreign jurisdiction of the PCAOB-Identified Firm. This submission will be made publicly available on EDGAR, which we believe is consistent with the HFCA Act given its focus on transparency.[29]

Additionally, the final amendments continue to permit Commission-Identified Issuers to determine the appropriate documentation to submit in response to the requirement, based on their organizational structure and other registrant-specific factors. We decline to provide an exclusive or non-exclusive list of what documentation may demonstrate that the registrant is not owned or controlled by the relevant governmental entity. We believe that such a list may be too limiting or become the *de facto* means of satisfying the requirement. We believe that Commission-Identified Issuers should instead make a determination of what documentation meets the requirement for their particular company. We also believe that not prescribing the specific documentation Commission-Identified Issuers must submit will limit compliance costs and could result in more relevant information being provided to investors.

Moreover, although the terms are not defined in the statute, we believe that the meaning of the terms ''owned or controlled,'' ''owned,'' and ''controlling financial interest'' in the HFCA Act reference a person's or governmental entity's ability to ''control'' the registrant as that term is used in the Exchange Act and the Exchange Act rules.

One commenter suggested that the amendments use the term ''significant influence'' under U.S. GAAP and incorporate a specified list of examples. We note, however, that the HFCA Act refers to the Exchange Act and the Commission's Exchange Act rules. Therefore, we believe the terms ''owned or controlled,'' ''owned,'' and ''controlling financial interest'' used in the HFCA Act are reasonably read to have the same meaning as the term ''control'' as used in the Exchange Act and the Exchange Act rules. Moreover, registrants should generally understand the concept of ''control'' and so incorporating the same meaning will result in consistent application of the concept across different regulatory contexts.

B. Disclosure Requirements

1. Interim Final Amendments

Section 3 of the HFCA Act requires a Commission-Identified Foreign Issuer to provide the following additional disclosures in its annual report for the year that the Commission so identifies the issuer: [30]

- That, during the period covered by the form, the PCAOB-Identified Firm that has prepared an audit report for the issuer; [31]

[26] *See* letter from Yum.

[27] *See* letter from U.S. Acctg. Academics.

[28] The final amendments do not specify the manner in which a registrant must submit the required documentation on EDGAR. A registrant could submit the documentation with its annual report; on Forms 8–K or 6–K, as applicable; or using another appropriate method.

[29] *See* letter from Sen. Kennedy (stating that the purpose of the legislation ''is to make relevant information about publicly traded firms explicit and easily accessible to investors'').

[30] The HFCA Act requires these disclosures in the issuer's Form 10–K, Form 20–F, or a form that is the equivalent of, or substantially similar to, these forms. The disclosures required by Section 3 of the HFCA Act are also required in transition reports filed on Forms 10–K and in transition reports on Form 20–F that include audited financial statements. The disclosures should address the transition period as if it were a fiscal year.

[31] The registered public accounting firm referenced in the statute means a PCAOB-Identified Firm. *See supra* notes 7 through 10. The interim final amendments included slightly different terms than those in the statutory language to clarify this and other points. Specifically, the interim final amendments required a Commission-Identified Foreign Issuer to disclose that, for the immediately preceding annual financial statement period, a

Continued

- The percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized;
- Whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer;
- The name of each official of the Chinese Communist Party (''CCP'') who is a member of the board of directors of the issuer or the operating entity with respect to the issuer; and
- Whether the articles of incorporation of the issuer (or equivalent organizing document) contains any charter of the CCP, including the text of any such charter.

Although Section 3 of the HFCA Act does not mandate specific rule or form changes, the Commission stated its belief in the Interim Final Release that amending Commission forms to include the new disclosure requirements will help registrants comply with the HFCA Act. The Commission therefore amended Form 10–K, Form 20–F, Form 40–F,[32] and Form N–CSR [33] to reflect the disclosure requirements in Section 3 of the HFCA Act.

The interim final amendments required a registrant to provide the disclosure for each year in which the registrant is a Commission-Identified Foreign Issuer. Because the period covered by the forms looks back at the prior year, a Commission-Identified Foreign Issuer that was identified in the prior year would have been required to provide the HFCA Act Section 3 disclosure in its annual report for the year in which it was identified, even if the registrant's subsequent filing includes an audit report issued by a registered public accounting firm that is a not a PCAOB Identified Firm (''non-PCAOB Identified Firm'').

In addition, the interim final amendments added an instruction in each of Form 20–F and Form 40–F to specify that the disclosure applies to annual reports, and not to registration statements.[34]

2. Comments

Commenters in one letter stated that registrants typically are not providing the detailed disclosures required by the HFCA Act and that current risk factor disclosure tends to be insufficient for investors to understand the consequences of non-inspection.[35] Other commenters in a separate letter recommended that the disclosure requirement relating to identification of officials of the CCP that are members of the board of directors is vague and may be unhelpful because the concept of ''official of the CCP'' is susceptible to variation.[36] The commenter stated that virtually all executives of Chinese state-owned enterprises are members of the CCP as are many executives of private firms. This commenter further stated that very little information about the degree of control exercised by the Chinese Government and CCP over a registrant can be gleaned solely from disclosure of a reference to the CCP charter in the company's articles of incorporation.

The commenter recommended requiring disclosure of each board member's current and past positions and ranks within the Chinese Government or CCP and whether the board member serves on the registrant's internal Communist Party Committee (suggesting such disclosure would provide material information about an individual's links to the Chinese party-state and, by extension, the degree of influence the party-state exerts over the company). Additionally, the commenter recommended disclosure of all provisions in a registrant's articles of incorporation that reference the CCP or the company's internal Communist Party Committee.

This commenter stated that since many companies with Chinese operations are listed in the United States using variable interest entity (''VIE'') structures incorporated in jurisdictions outside of China, the disclosure requirements could be read as not requiring disclosure of Chinese Government ownership of shares of the registrant. The commenter recommended that the amendments clarify that ''Commission-Identified Foreign Issuers are required to disclose the percentage of shares of the registrant owned by governmental entities in the foreign jurisdiction in which the registrant is incorporated or otherwise organized, or in which the registrant's operating entity is incorporated.''

Another commenter recommended that the Commission consider whether risks are heightened for registrants using a VIE structure, given that the structure could block meaningful disclosure of financial and political information.[37] A different commenter also noted concerns with VIE and dual-class structures, which are complex and involve risks that the commenter believes are not fully understood by many market participants.[38] This commenter recommended additional disclosure guidance for VIE and dual-class stock structures for investors to more fully understand the ownership or control of those registrants subject to the HFCA Act.

Moreover, one commenter suggested that we consider distinguishing registrants that list exclusively on a U.S. exchange from those that have a secondary listing overseas, noting the Commission's assessment in the Interim Final Release that 79 percent of registrants covered by the HFCA Act disclose listing only on a U.S. national exchange.[39] Another commenter suggested vigilance relating to firms that switch between U.S. and foreign jurisdictions to reset the clock or switch to auditors operating only nominally in the United States.[40]

3. Final Amendments

We are finalizing the disclosure requirements for Commission-Identified Foreign Issuers with a minor modification to the interim final amendments. As with the interim final amendments, we are adopting amendments to Form 10–K to revise Part II, Item 9C, Form 20–F to revise Part II, Item 16I, Form 40–F to revise

registered public accounting firm that the PCAOB was unable to inspect or investigate completely, because of a position taken by an authority in the foreign jurisdiction, issued an audit report for the registrant. For the same reasons, the final amendments include the same terms used in the interim final amendments for clarification as well.

[32] As we noted in the Interim Final Release, in reviewing the Commission's forms, we determined that Form 40–F is an equivalent or substantially similar form filed by foreign issuers. The Form 40–F is a form that may be used by Canadian issuers that seek to offer their securities in the United States and is used by those issuers for annual reports filed under Section 13(a) or Section 15(d) of the Exchange Act. As such, even though the form is not expressly named in the HFCA Act, its use by issuers for annual reports filed under Section 13(a) and Section 15(d) establishes the form as equivalent or substantially similar to the Form 10–K and Form 20–F.

[33] Form N–CSR is an annual reporting form used by registered investment companies that are affected by the HFCA Act to file their audited financial statements with the Commission. Although Form N–CSR is not specifically identified in the HFCA Act, as we indicated in the Interim Final Release, its use by these registered investment companies for annual reports filed under Section 13(a) and Section 15(d) establishes the form as equivalent or substantially similar to the Form 10–K and Form 20–F.

[34] While Form 20–F and Form 40–F may be used as an initial registration form, the Commission noted its belief in the Interim Final Release that, in the context of Section 3 of the HFCA Act, which linked the Form 20–F requirement to the Form 10–K requirement, the disclosure was intended to be required when the form is used as an annual report.

[35] *See* letter from U.S. Acctg. Academics.

[36] *See* letter from Profs. Milhaupt and Lin.

[37] *See* letter from Kelly.

[38] *See* letter from CII.

[39] *See* letter from Kelly (citing Interim Final Release, *supra* note 3, at 17538, n. 54).

[40] *See* letter from U.S. Acctg. Academics.

paragraph B.18, and Form N–CSR to revise paragraph (j) of Item 4. The amended language in these forms is the same as the language in the interim final amendments, with the exception of the modification pertaining to VIE structures described below, and requires a Commission-Identified Foreign Issuer to provide the disclosures discussed above that are required by the HFCA Act.[41]

We do not believe it is necessary to explain further what is meant by ''official of the CCP'' or require additional disclosures relating to this matter at this time. We believe the term is clear from the HFCA Act and our amendments. Moreover, we are not adopting additional disclosure requirements suggested by some commenters, as they would exceed the HFCA Act's requirements and are outside the scope of this rulemaking.

We note commenters' concerns that the interim final amendments could be interpreted to mean that a Commission-Identified Foreign Issuer listed in the United States using VIE or similar corporate structures that is incorporated or otherwise organized in one jurisdiction, but that has a consolidated operating company incorporated or otherwise organized in another jurisdiction, may not be required to disclose government ownership of shares of the operating company.[42] That was not the intent of the interim final amendments, and we do not believe this is consistent with the intent of the HFCA Act. Therefore, we believe that a registrant should provide the required disclosure associated with a consolidated operating company through a VIE structure or other similar structures. Also, we do not believe that a registrant should be able to avoid the HFCA Act's requirements by using a VIE structure or other similar structures.

Therefore, the final amendments modify the interim final amendments to make clear that the registrant must, in addition to providing the required disclosures for the Commission-Identified Foreign Issuer, look through a VIE or any structure that results in additional foreign entities being consolidated in the financial statements of the registrant and provide the required disclosures about any consolidated operating company or companies in the relevant jurisdiction. Thus, the amended forms state that any Commission-Identified Foreign Issuer that uses a VIE or any structure that results in additional foreign entities being consolidated in the financial statements of the registrant must provide the required disclosures for itself and its consolidated foreign operating entities.

C. Inline XBRL Tagging

In the Interim Final Release, we sought comment on whether to introduce structured data tagging requirements pertaining to the auditor name and jurisdiction on the audit report signed by the registered public accounting firm in the registrant's Form 10–K, Form 20–F, and Form 40–F. We suggested that such tagging would provide machine-readable data directly from the registrant identifying the audit firm retained by it, and may therefore facilitate the Commission's determination of the registrants it should designate as Commission-Identified Issuers. Two commenters recommended an eXtensible Business Reporting Language (''XBRL'') structured tagging requirement.[43] One of these commenters recommended tagging the auditor name, branch office, and PCAOB jurisdiction as listed on the Form AP, and the other commenter suggested tagging the auditor's name and jurisdiction as set forth on the audit report.[44]

Consistent with these commenters' suggestions, the final amendments include a new tagging requirement to facilitate the Commission's accurate and efficient identification of Commission-Identified Issuers. To implement this requirement, in December 2021, the Document Entity and Information (''DEI'') taxonomy will be updated to include three additional data elements, applicable to annual report filings on Forms 10–K, 20–F, and 40–F that are submitted with XBRL presentations.[45] Those three data elements will identify the auditor (or auditors) who have provided opinions related to the financial statements presented in the registrant's annual report, the location where the auditor's report has been issued, and the PCAOB ID Number(s) of the audit firm(s) or branch(es) providing the opinion(s).

When the updated DEI taxonomy is published, deployed to EDGAR, and announced as part of the newly-adopted EDGAR Filer Manual for the relevant release in December 2021, all registrants will be required to use the updated taxonomy, or a subsequently adopted version of the taxonomy, for any annual report filed for a period ended after December 15, 2021.

We are adding a new paragraph to Rule 405 of Regulation S–T to clarify that registrants must use the new data elements. The paragraph will remain part of Regulation S–T until the 2021 DEI taxonomy has been removed from EDGAR in 2023. Because we are not adopting a change to the underlying forms, for registrants that are filing their financial statements using Inline XBRL, the final amendments leave placement of the underlying tags within the annual report up to the registrant.[46]

D. Timing Issues

The HFCA Act was enacted on December 18, 2020 and provides for identification of the issuers required to file reports under Section 13 or 15(d) of the Exchange Act during a year that begins ''after the date of enactment'' of the HFCA Act. Given this statutory language, and in response to some commenters,[47] we reiterate that a registrant will not be subject to a non-inspection year determination for any fiscal year ending on or prior to December 18, 2020. Accordingly, the Commission will identify registrants pursuant to the HFCA Act based on the PCAOB's determination and on registrants' annual reports for fiscal years beginning after December 18, 2020. The earliest that the Commission could identify a Commission-Identified Issuer would be after registrants file their annual reports for 2021 and identify the accounting firm that audited their financial statements.

A registrant will be required to comply with the submission and disclosure requirements in the annual report for each year in which it was so identified. This means that if a registrant is identified as being a Commission-Identified Issuer based on

[41] *See supra* Section II.B.1.

[42] *See* letters from CII, Kelly, and Profs. Milhaupt and Lin.

[43] *See* letters from U.S. Acctg. Academics and CII.

[44] *See* letter from U.S. Acctg. Academics.

[45] We expect that the revised DEI Taxonomy will be published as ''dei–2021q4.'' A draft of the taxonomies was published for comment on September 1, 2021 at *https://xbrl.sec.gov/dei/2021q4/. See DRAFT 20201Q4 and Draft 2022 SEC Taxonomies, available at https://www.sec.gov/structureddata/announcement/osd-announcement-081621-draft-cef-and-vip-taxonomies-update. See Also Release Notes for CEF and DEI Taxonomies 2021Q4 DRAFT,* U.S. Sec. Exch. & Comm'n (Sept. 1, 2021), available at *https://xbrl.sec.gov/doc/releasenotes-2021q4-draft.pdf.* We are not making similar updates to the DEI taxonomy for Form N–CSR because the Commission currently collects on Form N–CEN (referenced in 17 CFR 249.330) information regarding a fund's auditor in a structured data format.

[46] The new DEI tagged data elements, particularly the PCAOB ID Number, are not new disclosure requirement themselves (*e.g.,* not changing the current form and content of the independent auditor's report), but are necessary for EDGAR and the staff to process the forms, akin to an EDGAR header data element. The data elements will to assist the Commission and its staff in performing the required identification activity required by the Act.

[47] *See* letters from ASA, Chamber, and NYSE.

its annual report filing made in 2022 for the fiscal year ended December 31, 2021, the registrant will be required to comply with the submission and, if applicable, the disclosure requirements in its annual report filing covering the fiscal year ended December 31, 2022, that the registrant is required to file in 2023.

E. Determination of Commission-Identified Issuer

In the Interim Final Release, the Commission stated that it will provide appropriate notice once it has established the process by which it will begin to identify registrants pursuant to the HFCA Act. In this regard, the Commission acknowledged that a registrant will not be required to comply with the submission or disclosure requirements until the Commission identifies a registrant as having a non-inspection year. The Commission also indicated that it was considering making the determination of Commission-Identified Issuers on an annual basis based on the audit report contained in a registrant's annual report filed with the Commission for the most recently completed fiscal year preceding the date of the Commission determination. Additionally, the Commission stated that a registered public accounting firm is ''retained'' by a registrant, as that term is used in Section 104(i) of the Sarbanes-Oxley Act, when the registered public accounting firm signs the accountant's report on the registrant's consolidated financial statements that is included in a registrant's Exchange Act report. The Commission requested comment on whether it should publish a list of Commission-Identified Issuers on its website or whether Commission-Identified Issuers should be identified on EDGAR. Finally, the Commission asked how it should address any potential errors in identification relating to a registrant's status if the list is made public and whether it should issue guidance or prescribe rules relating to disclosure or procedures for identification of errors relating to a registrant's status.

A few commenters suggested that the Commission should make the Commission-Identified Issuer determination based on the registrant's fiscal year end.[48] One commenter stated that the Commission should make determinations and provide notice to registrants as early as possible after a registrant's filing of its annual report.[49] Some commenters recommended publishing the list of Commission-Identified Issuers on the Commission's website,[50] while one commenter recommended providing the information on EDGAR for efficient and rapid identification.[51]

One commenter suggested that providing a list or identifying Commission-Identified Issuers on EDGAR is unnecessary and doing so would go beyond the statutory mandate.[52] Some commenters indicated that the Commission should notify directly any registrants that it has determined to be Commission-Identified Issuers prior to publishing the list, in light of the potential market impact on these issuers and to ensure accuracy of such a list.[53] Yet another commenter recommended that the Commission provide guidance rather than prescribe rules relating to disclosure or procedures to correct errors relating to the Commission's inclusion of a registrant on its Commission-Identified Issuer list to provide flexibility to the Commission and registrants.[54]

One commenter noted potential discrepancies between the three primary sources of public data that could be used to determine Commission-Identified Issuers: (1) The PCAOB's published list of audit reports in jurisdictions where authorities deny access, (2) the PCAOB's Form AP database, and (3) registrants' annual reports filed on EDGAR.[55] According to the commenter, these potential discrepancies raise a concern regarding the information on which the Commission would base its determination. The commenter also argued that, in situations with multiple audit reports in an annual report filing, the ''retained'' auditor should be ''the auditor who signs off on the current (or more recent) fiscal-year financial statements.''

Based on our further consideration and the input of commenters, we have determined to institute the following procedures for preparing and publishing the Commission-Identified Issuer list. We agree with the commenter who suggested that registrants should be identified as early as possible after the filing of an annual report and on a rolling basis.[56] Accordingly, promptly after the filing of an annual report, the Commission will evaluate, using Inline XBRL tagging or other structured data, whether the annual report contains an audit report signed by a PCAOB-Identified Firm.[57]

We continue to believe that a registered public accounting firm is ''retained'' by a registrant, as that term is used in Section 104(i) of the Sarbanes-Oxley Act, when the registered public accounting firm signs the accountant's report on the registrant's consolidated financial statements that is included in a registrant's Exchange Act report. However, we are taking a different approach than the one suggested by a commenter regarding instances where an annual report may contain multiple audit reports. In situations where an annual report for an issuer other than a registered investment company registrant organized as a series company contains multiple accountant's reports or involves more than one registered public accounting firm, only the registered public accounting firm or firms that serve as ''principal accountant'' within the meaning of 17 CFR 210.2–05 (Rule 2–05 of Regulation S–X) and AS 1205: *Part of the Audit Performed by Other Independent Auditors* will, upon signing the accountant's report on the registrant's consolidated financial statements, be deemed ''retained'' for purposes of Section 104(i) of the Sarbanes-Oxley Act and the Commission's determination of whether the registrant should be a Commission Identified Issuer. For a registered investment company registrant organized as a series company, each series will be deemed to ''retain'' the public accounting firm that signs the audit report for the series.

Once a registrant has been identified as described above,[58] the Commission [59] will ''provisionally identify'' such issuer as a Commission-Identified Issuer on the Commission's website at *www.sec.gov/HFCAA*. The Commission website will clearly delineate between provisional identifications and ''conclusive identifications,'' and

[48] *See* letters from Chamber (recommending 30 or 45 days after the filing deadline for the annual report), U.S. Acctg. Academics, and Yum.

[49] *See* letter from Yum.

[50] *See* letters from ASA, Chamber, and U.S. Acctg. Academics.

[51] *See* letter from CII.

[52] *See* letter from Yum.

[53] *See* letters from Chamber and Yum.

[54] *See* letter from Yum.

[55] *See* letter from U.S. Acctg. Academics.

[56] *See supra* note 49.

[57] In response to the commenter that raised concerns regarding the potential discrepancies between primary sources of data from which the Commission may generate its list, we note that we intend to base a determination on whether a registrant is a Commission Identified Issuer based on the audit report included in their annual report filing. We do not believe that the determination should be made based on Form AP filings because these are not filings made by the registrant.

[58] *See supra* Section II.D.

[59] As discussed below, *see infra* Section II.G, the Commission is adopting 17 CFR 200.30–1(m) (new Rule 30–1(m)) that delegates Commission authority to the Director of the Division of Corporation Finance to identify a registrant as a Commission-Identified Issuer.

registrants will not be a Commission-Identified Issuer until a conclusive determination has been made. For a period of 15 business days [60] after the provisional identification, a registrant may contact the Commission by email [61] if it believes it has been incorrectly identified and may provide evidence supporting such claims. The Commission will respond to the registrant by email with respect to its analysis of such evidence and its determination. If the Commission agrees with the registrant's analysis, the Commission will notify the registrant and will remove the registrant from the provisional identification list. On the other hand, if the Commission does not agree that the registrant has been incorrectly identified, the determination that the registrant is a Commission-Identified Issuer will be conclusive. If the registrant does not contact the Commission to dispute the provisional identification, the determination that the registrant is a Commission-Identified Issuer will be conclusive 15 business days after the provisional identification.[62]

We did not accept the suggestion of one commenter that the staff contact each individual registrant that has been identified for inclusion in the list because we believe website posting will provide sufficient notice and we are concerned that such procedures could further delay issuer identification, which would be to the detriment of investors. Additionally, under the PCAOB Rule 6100, the PCAOB will notify each PCAOB-Identified Firm of its determination and will also publish the list on its website. As such, we do not believe provisional identification of issuers on the Commission website will have a significant additional market impact. Finally, we considered but determined not to publish the list of Commission-Identified Issuers on EDGAR. The EDGAR system is designed to retain filings by and about individual registrants, rather than present collated information. Consequently, the EDGAR system will not provide a mechanism to publish a list on EDGAR that includes a number of registrants grouped together.

In addition to identifying Commission-Identified Issuers, the list published on the Commission website will indicate the number of consecutive years a Commission-Identified Issuer has been published on the list and whether it has been subject to any prior trading prohibitions under the HFCA Act. We believe it is appropriate to include this information on the list because of the significance of the trading prohibition requirements set forth in Section 104(i)(3) of the Sarbanes-Oxley Act, as discussed in greater detail below.[63]

F. Process for Trading Prohibition

1. HFCA Act Trading Prohibitions

Section 104(i)(3) of the Sarbanes-Oxley Act requires the Commission to prohibit the trading on a national securities exchange or through any other method which is within the jurisdiction of the Commission to regulate, including through over-the-counter trading, of the securities of certain Commission-Identified Issuers (''trading prohibition''). Section 104(i)(3)(A) of the Sarbanes-Oxley Act requires the Commission to impose a trading prohibition on a registrant that is determined to be a Commission-Identified Issuer for three consecutive years (''initial trading prohibition''). Section 104(i)(3)(B) of the Sarbanes-Oxley Act provides that the Commission shall end an initial trading prohibition if the issuer certifies to the Commission that it ''has retained a registered public accounting firm that the [PCAOB] has inspected'' to the satisfaction of the Commission.[64] Furthermore, if the Commission ends a trading prohibition under Section 104(i)(3)(B) of the Sarbanes-Oxley Act and, thereafter, the registrant is again determined to be a Commission-Identified Issuer, Section 104(i)(3)(C) of the Sarbanes-Oxley Act requires the Commission to impose on such issuer a trading prohibition for a minimum of five years (''subsequent trading prohibition''). Section 104(i)(3)(D) of the Sarbanes-Oxley Act provides that the Commission shall end a subsequent trading prohibition if, after the end of the five-year period, the issuer certifies to the Commission that it ''will retain'' a non-PCAOB-Identified Firm.[65]

In the Interim Final Release, the Commission specifically requested comment on any considerations it should take into account while determining how to best implement the trading prohibition requirements set forth in Section 104(i)(3) of the Sarbanes-Oxley Act.[66] A few commenters supported the prompt implementation of the trading prohibition.[67] One of these commenters suggested that any deferral of the commencement beyond 2024 would be inconsistent with the HFCA Act.[68]

Other commenters noted the importance of clear rules relating to the trading prohibition.[69] One of these commenters highlighted the importance of the Commission establishing a ''transparent and well communicated'' process with clear information and adequate notice of delisting to minimize disruption to investors in such entities.[70] This commenter indicated that a ''transparent process that provides clear information and adequate notice'' is necessary to provide market participants with the information they need to make investment decisions in a timely manner.

Another commenter recommended that the precise date on which any trading prohibition applies to an issuer's securities be made public by the Commission as soon as possible and that we allow no flexibility or ambiguity regarding the date on which the trading prohibition applies.[71] This commenter further recommended clarifying whether a trading prohibition would include derivatives, such as options and swaps based on the Commission-Identified Issuer's securities, and that the Commission should clearly establish the impact of a trading prohibition on any other securities market activities, such as clearance and settlement and options exercise and assignment. Another commenter stated that the Commission should take steps to prohibit the trading of Commission-Identified Issuer's securities on margin to avoid creating unnecessary risks that will disrupt markets and needlessly harm small investors and prohibit the inclusion of Chinese companies in passive index funds.[72] On the other

[60] The term ''business day'' means any day, other than Saturday, Sunday, or a Federal holiday.

[61] The email address will be provided on the *www.sec.gov/HFCAA* website when or before the provisional Commission-Identified Issuer list is first populated.

[62] In no event would the conclusive determination be made before expiration of the 15-business-day period.

[63] *See infra* Section II.F.

[64] For purposes of terminating an initial trading prohibition or subsequent trading prohibition, the Commission will terminate the prohibition if the retained firm is a non-PCAOB-Identified Firm.

[65] The five-year period begins on the date on which the Commission imposes a subsequent trading prohibition. *See* Section 104(i)(3)(D) of the Sarbanes-Oxley Act.

[66] *See* Interim Final Release *supra* note 3, at 17533.

[67] *See* letters from CII and Sen. Sullivan *et al.*

[68] *See* letter from CII.

[69] *See* letters from ICI and NYSE.

[70] *See* letter from ICI.

[71] *See* letter from NYSE. This commenter recommended clarifying whether a trading prohibition would commence: (i) On January 1 of the third year following the Commission's determination that a registrant is a Commission-Identified Issuer; or (ii) three years after the date on which the Commission makes its determination that a registrant is a Commission-Identified Issuer. *See also infra* note 82 and accompanying text.

[72] *See* letter from ASA.

hand, some commenters generally opposed the trading prohibition required by the HFCA Act, arguing that the trading prohibition would damage U.S. capital markets and harm U.S. investors.[73]

We agree with those commenters[74] who stated that the prompt implementation of the trading prohibition requirements of Section 104(i)(3) of the Sarbanes-Oxley Act is consistent with the HFCA Act.[75] In response to commenters opposed to implementing the trading prohibitions,[76] we point to the statutory mandate to impose trading prohibitions under the HFCA Act.[77] We agree with commenters[78] that a clear and transparent process for implementing and terminating a trading prohibition, and advance notice of such process, will assist market participants, minimize disruptions to the investors, and help to maintain fair and orderly markets. Accordingly, we have determined that it is appropriate to notify issuers, investors, and other market participants of the procedures by which the Commission will impose an initial or subsequent trading prohibition and terminate an initial or subsequent trading prohibition, including how issuers may certify that they have or will retain a non-PCAOB-Identified Firm pursuant to Section 104(i)(3)(B) or (D) of the Sarbanes-Oxley Act.[79]

2. Process for Imposing a HFCA Act Trading Prohibition

As an initial matter, we have set forth above a clear and transparent process for identifying Commission-Identified Issuers that provides issuers with an opportunity to dispute their status as a Commission-Identified Issuer.[80] In addition, the Commission has stated that it will publicly disclose on its website the list of Commission-Identified Issuers, the number of consecutive years that an issuer has been identified as a Commission-Identified Issuer, and the application of any prior trading prohibition to an issuer.[81] As a result, investors and market participants should have sufficient notice regarding whether a security that they hold or plan to hold is issued by a Commission-Identified Issuer and of the risk that such security may be subject to a trading prohibition in the future, including the timeline for implementation of such trading prohibition if the issuer remains a Commission-Identified Issuer. Furthermore, an initial trading prohibition would not be imposed until an issuer has been a Commission-Identified Issuer for three consecutive years. Thus, issuers will have a period of three years to retain a non-PCAOB-Identified Firm before an initial trading prohibition would be imposed, and investors would have the same period of time in which to determine what action, if any, to take regarding their investments in any Commission-Identified Issuer.

Given the procedural protections afforded to issuers pursuant to the Commission's approach provided herein and the fact that issuers and the investing public will have had sufficient notice of an issuer's status as a Commission-Identified Issuer over a period of three years, we believe that it is appropriate and consistent with the protection of investors for the Commission to impose an initial trading prohibition and issue an order prohibiting the trading of an issuer's securities[82] on a national securities exchange and in the over-the-counter market as soon as practicable after the issuer has been determined to be a Commission-Identified Issuer for three consecutive years.[83]

An order issuing an initial trading prohibition would provide that such trading prohibition will be effective on the fourth business day after the order is published by the Commission.[84] We believe that providing a short delay in effectiveness of an initial trading prohibition appropriately addresses concerns regarding the risk to investors in U.S. markets of continued trading of Commission-Identified Issuers while also providing appropriate notice to investors and other market participants in order to make investment decisions. Moreover, the Commission believes this procedure will inform investors when a trading prohibition will be imposed and when it will become effective.[85]

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[73] *See* letters from Blank Rome, China Southern, Chinese Legal Academics, Kelly, and Yum.

[74] *See supra* notes 67 to 68. As noted above, the earliest that Commission could identify Commission-Identified Issuers would be after companies file their annual reports for 2021 and identify the accounting firm that audited their financial statements that, for calendar year issuers, would be spring of 2022. As a result, the earliest any trading prohibitions required by Section 104(i)(3) of the Sarbanes-Oxley Act would apply would be in 2024, once any issuer has been a Commission-Identified Issuer for three consecutive years (2022, 2023, and 2024).

[75] *See, e.g.,* Sarbanes-Oxley Act, Sections 104(i)(1)(B) (defining the term ''non-inspection year'' to mean a year ''(i) during which the Commission identifies the covered issuer under paragraph (2)(A) with respect to every report described in subparagraph (A) filed by the covered issuer during that year; and (ii) that begins after the date of enactment of this subsection'') and 104(i)(3)(A) (requiring the Commission to impose a trading prohibition if the Commission determines a covered issuer has three consecutive non-inspection years).

[76] *See supra* note 73.

[77] *See supra* note 65.

[78] *See supra* note 69.

[79] We note that unlike other provisions of the HFCA Act, the Commission is not required to undertake rulemaking to implement the trading prohibitions of Section 104(i)(3) of the Sarbanes-Oxley Act. *See, e.g.,* Section 104(i)(4) of the Sarbanes-Oxley Act (requiring the Commission to issue rules establishing the manner and form for an issuer to submit documentation that it is not owned or controlled by a government entity in a foreign jurisdiction).

[80] *See supra* Section II.E.

[81] *See id.*

[82] A commenter asked for clarification of the impact of a trading prohibition on derivative securities. *See* letter from NYSE. The Sarbanes-Oxley Act, as amended by the HFCA Act, states that the Commission ''shall prohibit *the securities of the covered issuer* from being traded . . . .'' Section 104(i)(3)(A) of the Sarbanes-Oxley Act (emphasis added). Accordingly, to the extent the derivative security is issued by the Commission-Identified Issuer subject to the trading prohibition, that derivative security would also be subject to the trading prohibition. For example, if a Commission-Identified Issuer that is subject to a trading prohibition has issued equity securities and warrants on such equity securities, both the equity securities and the warrants would be prohibited from trading. However, we understand that most exchange-traded standardized equity options are issued by the Options Clearing Corporation, rather than the issuer of the underlying equity. *See, e.g.,* Financial Industry Regulatory Authority Rule 2360(a)(32) (defining ''standardized equity option''). As another example, we understand that security-based swaps are generally entered into bilaterally between security-based swap dealers and/or eligible contract participants and are not issued by the issuer of the underlying equity securities. *See Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only by Eligible Contract Participants,* Release No. 33–10450 (Jan. 5, 2018) [83 FR 2046, 2051 n.60 (Jan. 16, 2018)] However, we further note that the imposition of a trading prohibition with respect to the underlying security of a derivative may itself have an impact on the derivative security, apart from the requirements of the Sarbanes-Oxley Act. And while this commenter requested the Commission to establish the impact of the trading prohibitions on any other securities market activities, such as clearance and settlement and options exercise and assignment, we note that there are already rules and processes in place in the securities markets to address when an equity security is subject to a trading halt, and those processes would generally apply with respect to a trading prohibition the same as they would with respect to any other trading halt. *See, e.g.,* Chicago Board Options Exchange Rules 4.4 (Withdrawal of Approval of Underlying Securities) and 502 (Trading Halts); Options Clearing Corporation Information Memo #30049 (Review of Trading Halt Processing).

[83] Those interested in providing feedback or discussing issues that may arise as a result of an initial trading prohibition or a subsequent trading prohibition may contact the Commission at the email address that will be provided on the *www.sec.gov/HFCAA* website.

[84] For example, if an order issuing a trading prohibition is published by the Commission on a Monday, the trading prohibition would be effective starting at 12:00 a.m. (Washington DC time) the Friday of that week.

[85] While the HFCA Act does not address the delisting of securities from a national securities exchange, the existing rules of national securities exchanges that list issuers that are subject to an initial trading prohibition are applicable to delisting of such issuers' securities, as appropriate.

Similarly, with respect to the imposition of a subsequent trading prohibition, the Commission would issue an order prohibiting the trading of an issuer's securities on a national securities exchange and in the over-the-counter market as soon as practicable after the issuer is again identified as a Commission-Identified Issuer. An order issuing a subsequent trading prohibition would provide that the trading prohibition will be effective on the fourth business day after the order is published by the Commission.[86] As with the process for issuing an initial trading prohibition, we believe that this procedure appropriately addresses concerns regarding the risk to investors in U.S. markets of continued trading of Commission-Identified Issuers that have previously been subject to an initial trading prohibition while also providing appropriate notice to investors and other market participants in order to make investment decisions. We believe that the application of a prior trading prohibition, the ability of an issuer to dispute its status as a Commission-Identified Issuer, the public availability of the provisional list of Commission-Identified Issuers,[87] and an issuer's repeat use of a registered public accounting firm that the PCAOB is unable to inspect or investigate completely warrant the same short delay in the effectiveness of a subsequent trading prohibition as in an initial trading prohibition. In addition, we believe this procedure will inform investors when a subsequent trading prohibition will be imposed and become effective.[88]

3. Process for Terminating Trading Prohibitions; Required Certification

Section 104(i)(3)(B) of the Sarbanes-Oxley Act provides that the Commission shall terminate an initial trading prohibition if a Commission-Identified Issuer certifies to the Commission that the issuer has retained a registered public accounting firm that the PCAOB has inspected to the satisfaction of the Commission.[89] Section 104(i)(3)(D) of the Sarbanes-Oxley Act also provides that the Commission shall terminate a subsequent trading prohibition if the Commission-Identified Issuer certifies to the Commission that the issuer will retain a registered public accounting firm that the PCAOB is able to inspect under this section.[90]

As a general matter, the retention of a registered public accounting firm does not guarantee that the newly engaged accounting firm will be the firm that issues an audit report on the financial statements of the issuer. Specifically, an issuer could retain more than one audit firm or retain a non-PCAOB-Identified Firm and subsequently replace the non-PCAOB-Identified Firm with a PCAOB-Identified Firm. Thus, in order to achieve the result that the retained non-PCAOB-Identified Firm is actually performing the audit, we believe it appropriate and consistent with the protection of investors that, for a Commission-Identified Issuer to certify consistent with Section 104(i)(3)(B) of the Sarbanes-Oxley Act, a Commission-Identified Issuer must file financial statements that include an audit report signed by a non-PCAOB-Identified Firm. Such a certification made by a Commission-Identified Issuer subject to an initial trading prohibition will terminate an initial trading prohibition.

Accordingly, a Commission-Identified Issuer subject to an initial trading prohibition can make the required certification that it ''has retained'' a non-PCAOB-Identified Firm to the satisfaction of the Commission only if such certification is preceded or accompanied by the filing of an annual report or an amended annual report with financial statements that include an audit report on the consolidated financial statements signed by a non-PCAOB-Identified Firm. We believe that lifting the trading prohibition prior to the Commission-Identified Issuer filing financial statements that include such an audit report would place investors at risk by commencing trading in a security for which the latest three annual reports filed with the Commission are audited by a PCAOB-Identified Firm. In addition, lifting the trading prohibition prior to the issuer filing financial statements that include an audit report on the consolidated financial statements signed by a non-PCAOB-Identified Firm could place investors at risk by commencing trading in a security that could potentially become subject to a subsequent trading prohibition lasting a minimum of five years if the issuer does in fact use a PCAOB-Identified Firm to perform its audit for its next annual report. Therefore, we believe it would be appropriate to terminate an initial trading prohibition only after investors and regulators have access to financial statements that include an audit report on the consolidated financial statements signed by a non-PCAOB-Identified Firm.

Similarly, we believe that a Commission-Identified Issuer that is subject to a subsequent trading prohibition should make at least the same showing to end trading prohibition as a Commission-Identified Issuer that is subject to an initial trading prohibition. Accordingly, for a Commission-Identified Issuer to certify consistent with Section 104(i)(3)(D) of the Sarbanes-Oxley Act, a Commission-Identified Issuer must file, either with or prior to its certification, an annual report or amended annual report with financial statements that include an audit report signed by a non-PCAOB-Identified Firm. Such a certification made by a Commission-Identified Issuer subject to a subsequent trading prohibition will terminate a subsequent trading prohibition.[91] We believe that the concerns described above with respect to an initial trading prohibition are even greater with Commission-Identified Issuers subject to a subsequent trading prohibition as a result of a repeated reliance on a PCAOB-Identified Firm. Further, an issuer subject to a subsequent trading prohibition would have at least five years to retain a non-PCAOB-Identified Firm to audit its financials before a subsequent trading prohibition could be terminated by the Commission.

As described above, a Commission-Identified Issuer subject to an initial or subsequent trading prohibition must certify that it has or will retain a non-PCAOB-Identified Firm for the Commission to end a trading prohibition,[92] and such certification would be submitted at the same time as, or after, the issuer files an annual or amended annual report with financial statements that include an audit report signed by a non-PCAOB-Identified Firm.[93] Once the Commission receives the certification and has verified that the issuer has in fact filed an annual or

[86] *See supra* note 84.

[87] We note that a provisional list of issuers that may be identified as Commission-Identified Issuers will be made publicly available before it is finalized. Accordingly, investors and other market participants would have access to the provisional list and would therefore have notice that a subsequent trading prohibition may be forthcoming. *See supra* Section II.E.

[88] While the HFCA Act does not address the delisting of securities from a national securities exchange, the existing rules of national securities exchanges that list issuers that are subject to a subsequent trading prohibition are applicable to delisting of such issuers' securities, as appropriate.

[89] *See* Section 104(i)(3)(B) of the Sarbanes-Oxley Act.

[90] *See* Section 104(i)(3)(D) of the Sarbanes-Oxley Act.

[91] The certification could be signed by any individual that is duly authorized to execute and deliver such a certification on behalf of the Commission-Identified Issuer.

[92] *See* Sections 104(i)(3)(B) and (D) of the Sarbanes-Oxley Act. Section 104(i)(3)(D) of the Sarbanes-Oxley Act further provides that, with respect to a subsequent trading prohibition, the issuer may not submit such certification until after the end of the five-year period.

[93] Any certification should be submitted in accordance with the EDGAR Filer Manual.

amended annual report with financial statements that include an audit report signed by a non-PCAOB-Identified Firm, the Commission shall as soon as practicable issue an order ending the initial or subsequent trading prohibition, as the case may be. An order ending an initial or subsequent trading prohibition will provide that the termination of the trading prohibition will be effective the next business day after the order is published by the Commission. We believe that once an issuer has certified to the satisfaction of the Commission that it has retained a non-PCAOB-Identified Firm, termination of the trading prohibition should not be delayed.

G. Amendment to the Delegations of Authority of the Commission

The Commission is adopting new Rule 30–1(m) that delegates Commission authority to the Director of the Division of Corporation Finance to identify a registrant as a Commission-Identified Issuer. This delegated authority is designed to conserve Commission resources by permitting Commission staff to carry out the procedures described herein in connection with the identification of Commission-Identified Issuers. The Commission staff may nevertheless submit matters to the Commission for consideration, as it deems appropriate.

III. Procedural and Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment. This requirement does not apply, however, if the agency ''for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' Section 2 of the HFCA Act requires Commission rulemaking within 90 days of the date of enactment in order to ''establish the manner and form in which a covered issuer shall make a submission required under paragraph (2)(B).'' Furthermore, Section 3 of the HFCA Act requires certain disclosure from issuers, and the amendments to Form 10–K, Form 20–F, Form 40–F, and Form N–CSR clarify issuers' obligations under the HFCA Act. Because the interim final amendments conformed the specified forms to the requirements of a newly enacted statute and in light of the 90-day rulemaking directive in Section 2 of the HFCA Act, the Commission found in the Interim Final Release that notice and public comment were impracticable and unnecessary.[94] The revisions to the interim final amendments being adopted in this release are in response to feedback received on requests for comment in the Interim Final Release.

IV. Economic Analysis

A. Introduction and Broad Economic Considerations

As discussed above, we are finalizing amendments to Form 10–K, Form 20–F, Form 40–F, and Form N–CSR that implemented the disclosure and submission requirements of the HFCA Act. We are mindful of the costs imposed by, and the benefits obtained from, our rules. In this section, we analyze potential economic effects stemming from the amendments.[95] We analyze these effects against a baseline that consists of the current regulatory framework and current market practices.

We are finalizing the interim final amendments with a modification to clarify that a Commission-Identified Foreign Issuer listed in the United States using VIE or any structure that results in additional foreign entities being consolidated in the financial statements of the registrant, must provide the HFCA Act's required disclosures regarding government ownership of shares of the operating company. We also are adding a requirement for registrants to tag the name, jurisdiction, and the PCAOB ID Number(s) of the audit firm(s) that sign the audit report accompanying a registrant's Form 10–K, Form 20–F, and Form 40–F. In this economic analysis, we discuss the economic effects arising from the interim final amendments as finalized, including the modifications discussion above. Where possible, we have attempted to quantify the expected economic effects of the amendments. Some of the potential economic effects are inherently difficult to quantify. In some instances, we lack the information or data necessary to provide reasonable estimates for the economic effects of the amendments. Where we cannot quantify the relevant economic effects, we discuss them in qualitative terms.

The new disclosure requirements will increase transparency about the reliability of affected issuers' financial statements as well as the characteristics of their ownership and control structures. High-quality disclosures, including high-quality financial statements, are a cornerstone of well-functioning capital markets.[96] Such disclosures reduce information asymmetries between investors and issuers, with positive effects on price efficiency and capital allocation.[97] Broadly speaking, academic research shows that increasing the quality of financial reporting improves price efficiency and reduces an issuer's cost of capital.[98]

[94] Accordingly, the interim final amendments did not require a final regulatory flexibility analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to publish a general notice of proposed rulemaking). For the same reason, these amendments do not require a final regulatory flexibility analysis).

[95] Exchange Act Section 3(f) requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Exchange Act Section 23(a)(2) requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Additionally, Section 2(c) of the Investment Company Act requires us, when engaging in rulemaking that requires us to consider or determine whether an action is consistent with the public interest, to also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Although we are adopting amendments to Form N–CSR to implement the HFCA Act as applied to registered investment companies, based on recent Form N–CEN filings, no registered investment company reported having retained a registered public accounting firm located in a foreign jurisdiction for the preparation of the company's financial statements. Based on this data, and Commission staff experience, we estimate that no registered investment companies will be subject to the requirements of the interim final amendments upon the rule's adoption. Accordingly, we do not expect any economic effects associated with the amendment to Form N–CSR.

[96] *See, e.g.,* Christian Leuz & Peter Wysocki, *The Economics of Disclosure and Financial Reporting Regulation,* 54 J. Acct. Research 525 (2016); and Anne Beyer, Daniel Cohen, Thomas Lys & Beverly Walther, *The Financial Reporting Environment: Review of the Recent Literature,* 50 J. Acct. Econ 296 (2010).

[97] *See, e.g.,* Douglas W. Diamond & Robert E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46 J. FIN. 1325 (1991).

[98] *See, e.g.,* Stephen Brown & Stephen A. Hillegeist, *How Disclosure Quality Affects the Level of Information Asymmetry,* 12 Rev. Account. Stud. 443 (2007) (showing how better disclosure quality reduces information asymmetry); Nilabhra Bhattacharya, Hemang Desai, & Kumar Venkataraman, *Does Earnings Quality Affect Information Asymmetry? Evidence from Trading*

Financial reporting quality is in part determined by audit quality. According to some academic studies, PCAOB oversight has led to improvements in audit quality and to increased investor confidence in the quality of the audited financial statements.[99] However, when the PCAOB is unable to inspect some auditors there is a lack of transparency with respect to the audit quality provided by such firms. As a result, there may be uncertainty regarding the reliability of the financial information of issuers audited by firms that are not inspected, which can potentially lead to suboptimal investment decisions by investors.

In addition, academic literature provides evidence of varying types of impact of ownership and control structures on firm value.[100] Government ownership, in particular, can be related to both risks and benefits for investors. Evidence in the literature highlights inefficiencies and expropriation risks as a result of government ownership or control, whereas other studies provide evidence of easier access to financing.[101] Effects from government ownership or control on firm value may be further amplified when the regulatory environment in the foreign jurisdiction is weak, and when there is heightened political risk.[102]

The required disclosures and submissions will reduce uncertainty about characteristics that may affect firm value and risk and therefore could facilitate investors' capital allocation decisions. Some of the information required to be disclosed under the amendments may be otherwise available to investors through other sources or overlap with existing mandated disclosures.[103] In such cases, we expect the required disclosures could nevertheless reduce search costs for investors and potentially enhance investor protection. In addition, the submission requirement will provide some reassurance to investors that Commission-Identified Issuers that do not disclose any ownership or control by governmental entities (in foreign jurisdictions that prevent PCAOB inspections) are not, in fact, owned or controlled by such entities.

The amendments will impose compliance costs on issuers that may vary based on characteristics of their audit arrangements and ownership structure. Although these compliance costs, in and of themselves, may not be significant for most firms, the costs may nonetheless cause certain issuers to accelerate their response to other aspects of the HFCA Act, such as switching audit firms or exiting the U.S. markets altogether. Those effects are likely to be much more significant than the comparatively limited benefits and costs associated with the interim final amendments.

B. Baseline

1. Regulatory Baseline

The regulatory baseline for these amendments includes the interim final amendments adopted on March 18, 2021, and the PCAOB Rule 6100, Board Determinations Under the Holding Foreign Companies Accountable Act, adopted the PCAOB on September 22, 2021 and approved by the Commission on November 4, 2021.[104]

The disclosures and submissions required by the amendments will provide the Commission, as well as market participants, with more readily accessible and comparable information regarding a number of Commission-Identified Issuers' characteristics, namely: (1) The extent of ownership or control by a governmental entity in a jurisdiction where the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in that jurisdiction, (2) the use of a registered public accounting firm in preparation of an audit report that the PCAOB is unable to fully inspect, (3) the presence and identity of any official of the CCP who is a member of the board of directors, and (4) the presence and specific text of any charter of the CCP contained in the registrant's articles of incorporation (or equivalent organizing document). We therefore analyze the extent to which such requirements will change existing regulatory requirements or the current practices of potentially affected registrants.

Compliance with the HFCA Act will require disclosures and submissions pertaining to the ownership or control of a registrant by a governmental entity in the foreign jurisdiction of the registered public accounting firm that the PCAOB is unable to inspect or investigate completely. In practice, many registrants already include disclosures similar to the information required by the HFCA Act in the portions of their respective periodic reports pertaining to registrant-specific risks.[105] Others provide detailed diagrams to illustrate their ownership structure within their descriptions of business or otherwise seek to inform readers of their VIE arrangements within the financial statements included in

Costs, 30 Cont. Account. Res. 482 (2013) (showing that earnings quality reduces information asymmetry); Partha Sengupta, *Corporate Disclosure Quality and the Cost of Debt,* 73 Account. Rev. 459 (1998) (showing that high disclosure quality reduces the cost of debt); Christine Botosan, *Disclosure Level and the Cost of Equity Capital,* 72 Acc. Rev. 323 (1997) (finding that disclosure quality reduces the cost of equity for firms with low analyst coverage); Mark E. Evans, *Commitment and Cost of Equity Capital: An Examination of Timely Balance Sheet Disclosure in Earnings Announcements,* 33 Cont. Account. Res. 1136 (2016) (finding that ''firms which consistently disclose balance sheet detail in relatively timely earnings announcements have lower costs of capital compared to other firms''); For a survey of financial reporting research, *see* Anne Beyer, Daniel A. Cohen, Thomas Z. Lys, & Beverly R. Walther, *The Financial Reporting Environment: Review of the Recent Literature,* 50 J. Account. Econ. 296 (2010).

[99] *See, e.g.,* Daniel Aobdia, *The Impact of the PCAOB Individual Engagement Inspection Process—Preliminary Evidence,* 93 Account. Rev. 53 (2018) (concluding that ''both audit firms and clients care about the PCAOB individual engagement inspection process and, in several instances, gravitate toward the level set by the Part I Finding bar''); Mark L. DeFond & Clive S. Lennox, *Do PCAOB Inspections Improve the Quality of Internal Control Audits?,* 55 J. Account. Res. 591 (2017) (finding evidence consistent with ''PCAOB inspections improving the quality of internal control audits by prompting auditors to remediate deficiencies in their audits of internal controls''); Brandon Gipper, Christian Leuz, & Mark Maffett, *Public Oversight and Reporting Credibility: Evidence from the PCAOB Audit Inspection Regime, 33 Rev. Financ. Stud.* 4532 (concluding that ''consistent with an increase in reporting credibility after the introduction of public audit oversight, we find that capital market responses to earnings surprises increase significantly'').

[100] *See, e.g.,* Andrei Shleifer & Robert Vishny, *A Survey of Corporate Governance,* 52 J. Fin. 737 (1997) (discussing both the theory and empirical evidence on the effect of large shareholders on firm value).

[101] *See, e.g.,* Ginka Borisova, Veljko Fotak, Kateryna Holland & William Megginson, *Government Ownership and the Cost of Debt: Evidence from Government Investments in Publicly Traded Firms,* 118 J. Fin. Econ. 168 (2015) (showing that during times of firm-specific or economy-wide distress, the dominant effect of state equity ownership is a reduction in the cost of debt, consistent with an implicit debt guarantee of government ownership); Gongmen Chen, Michael Firth & Liping Xu, *Does the Type of Ownership Control Matter? Evidence from China's Listed Companies,* 33 J. Bank. Finance 171 (2009) (finding evidence that the type of government ownership affects value and performance).

[102] *See, e.g.,* Laura Liu, Haibing Shu & John Wei, *The Impacts of Political Uncertainty on Asset Prices: Evidence from the Bo Scandal in China,* 125 J. Fin. Econ. 286 (2017) (concluding that political uncertainty is a priced risk as evidenced by stock price reactions following the 2012 Bo Xilai political scandal in China; the study shows amplified effects on prices for state-owned enterprises and politically connected companies); Bryan Kelly, Lubos Pastor & Pietro Veronesi, *The Price of Political Uncertainty: Theory and Evidence from the Option Market,* 71 J. FIN. 2417 (2016) (finding that options whose lives span political events tend to be more expensive, and that such protection is more valuable in a weaker economy and amid higher political uncertainty).

[103] *See infra* Section IV.B.1.

[104] *See supra* note 10.

[105] For example, some registrants may provide these disclosures in response to 17 CFR 229.105 (Item 105 of Regulation S–K) (requiring a registrant to disclose a discussion of the material factors that make an investment in the registrant or offering speculative or risky).

periodic disclosures.[106] The levels of detail and specificity associated with these disclosures vary, however, and the information often is not easily comparable across filings given that similar disclosures may not occur within the same item or section of the report.[107]

One notable exception to this variation in disclosures, however, is the disclosure by registrants of the PCAOB's inability to conduct inspections of their respective independent audit firms. We observe a highly similar type and pattern of disclosure regarding the PCAOB's inability to inspect those firms included in the majority of the potential Commission-Identified Issuers' Item 3 (for Form 20–F filers) and Item 1A (for Form 10–K filers) discussion of risk factors.[108] Such disclosures are readily accessible using the keyword search functionality on the Commission's EDGAR website.[109] In addition, similar identification of registrants whose independent auditors were not fully inspected by the PCAOB due to limitations and restrictions imposed by authorities in foreign jurisdictions has historically been available via the PCAOB's dedicated ''Public Companies that are Audit Clients of PCAOB-Registered Firms from Non-U.S. Jurisdictions where the PCAOB is Denied Access to Conduct Inspections'' web page.[110]

Under the amendments, Commission-Identified Foreign Issuers will also be required to disclose the presence and identity of any official of the CCP who is a member of its board of directors in addition to the percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized and whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer. At present, some of this information may be elicited by Form 10–K disclosure requirements [111] or Form 20–F disclosure requirements.[112] Because Form 10–K, Part III disclosures may be incorporated by reference from the registrant's definitive proxy statement if filed within 120 days of the related Form 10–K fiscal year end, or alternatively filed as a Form 10–K amendment by the same 120 day deadline, such disclosures are not currently uniformly present in the annual report filings of the potentially affected issuers. Moreover, there are currently no requirements that such disclosures must include the political party affiliation or party posts of those responsible for registrants' management and oversight, including but not limited to members of the board. Nor is there a requirement to systematically disclose the identity and ownership stake of any person or group of persons—including government entities—who directly or indirectly acquire or have beneficial ownership of less than five percent of a class of a Commission-Identified Issuer's securities.

Finally, under the amendments, Commission-Identified Foreign Issuers will be required to state whether the articles of incorporation of the issuer (or equivalent organizing document) contains any charter of the CCP, including the text of any such charter. While periodic reporting requirements currently instruct registrants to include a complete copy of the articles of incorporation and bylaws as an exhibit to the annual report,[113] there are no requirements to identify the political or textual origins of any portion of a registrant's articles of incorporation. In practice, given that a registrant may simply indicate in its annual report exhibit index that such articles are incorporated by reference,[114] few filers include the full text of such articles, bylaws, or charters in annual report filings after initially doing so at the time of initial public offering (''IPO'') registration. Similarly, amended or revised versions of the registrant's articles of incorporation and bylaws are generally not included in the annual report filing, but are incorporated by reference as well. In these cases, locating the submission to which the registrant's complete and most recent version of its articles of incorporation are attached in their entirety requires a search and review of the registrant's current reports (on Forms 8–K or 6–K).[115] Therefore, under current regulatory requirements and in practice, the majority of annual reports filed by potential Commission-Identified Foreign Issuers do not include, either in part or in complete form, the registrant's articles of incorporation, from which the reader might assess the presence or absence of text from the charter of the CCP.

[106] *See* Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities.

[107] *See, e.g.,* Justin Hopkins, Mark H. Lang & Jianxin (Donny) Zhao, *The Rise of US-Listed VIEs from China: Balancing State Control and Access to Foreign Capital,* Darden Business School (Working Paper No. 3119912), Kenan Institute of Private Enterprise Research Paper No. 19–17 (2018), *available at http://dx.doi.org/10.2139/ssrn.3119912* (finding that, Chinese firms disclose using a VIE structure in 42 percent of reviewed year 2013 Forms 10–K, where ''some firms simply mention the VIE structure in passing, while others explicitly disclose the legal risks of the VIE, documenting which specific subsidiaries utilize the VIE and provide pro forma balance sheets and income statements for these subsidiaries, as well as summarizing the specific contracts including the parties and terms''). *See also,* Paul Gillis& Michelle R. Lowry, *Son of Enron: Investors Weigh the Risks of Chinese variable Interest Entities,* 26 J. Appl. Corp. Fin. 61 (2014).

[108] Staff conducted a review of annual report disclosures using a combination of Intelligize searches and a manual review of select filings of Forms 10–K and 20–F. Highly similar language describing the potential risks associated with the PCAOB's inability to conduct inspections appeared across at least 65% of annual reports filed within the same year, including reviewed periods that predate the initial introduction of the HFCA Act legislation in 2019. As no single audit firm currently serves more than, at maximum, 20% of potential Commission-Identified Issuers, the inclusion of standard disclosures across registrants does not appear to be attributable to the practices of any individual audit firm. *See infra* note 117 for a description of the sample identification methodology.

[109] *Available at https://www.sec.gov/edgar/search/.*

[110] *Available at https://pcaobus.org/oversight/international/denied-access-to-inspections.*

[111] *See* 17 CFR 229.401 (Item 401 of Regulation S–K), 17 CFR 229.403 (Item 403 of Regulation S–K), and 17 CFR 229.404 (Item 404 of Regulation S–K), required under Items 10, 12 and 13 of Form 10–K. Item 401 of Regulation S–K requires disclosure relating to the identification of directors and a brief description of their business experience. Item 403 of Regulation S–K requires disclosure with respect to any person or group that beneficially owns more than five percent of any class of the registrant's voting securities, as well as ownership information of executive officers and directors of the registrant. Item 404 of Regulation S–K requires disclosure of transactions between the registrant and related persons, such as officers, directors and significant shareholders.

[112] *See* Items 6 and 7 of Form 20–F. Item 6 of Form 20–F requires disclosure relating to the identification and share ownership of directors and senior management. Item 7 of Form 20–F requires disclosure with respect to beneficial owners of more than five percent of any class of the registrant's voting securities, disclosure with respect to related party transactions, as well as disclosure of whether the company is directly or indirectly owned or controlled by another corporation or foreign government and the nature of that control.

[113] *See* Item 19, Instruction 1 of Form 20–F and 17 CFR 229.601(b)(3)(i).

[114] *See* 17 CFR 240.12b–23(c).

[115] The requirement to submit a Form 6–K in such cases by registrants that use Form 20–F to file annual reports depends upon the current reporting requirements of the relevant foreign jurisdiction. Because potential Commission-Identified Issuers domiciled, incorporated, or organized in China are required by Chapter 5 Article 27 of the Regulations of the People's Republic of China on Administration of Company Registration to file a complete copy of the revised articles within 30 days of such changes, a similar requirement to promptly furnish a Form 6–K including the complete revised articles of incorporation also applies. This document may then be incorporated by reference in the registrant's subsequent annual reports. Analogous requirements for registrants using domestic forms are outlined in Form 8–K, Item 5.03.

2. Affected Parties [116]

a. Registrants

Registrants subject to periodic reporting requirements under the Exchange Act will not be affected by the amendments unless and until they are Commission-Identified Issuers. Commission identification of such issuers is in turn contingent upon initial identification of affected registered public accounting firms that are retained by registrants with periodic disclosure obligations. Based upon a review of such registrants in calendar year 2020, we identified 273 registrants for whom future identification as a Commission-Identified Issuer might occur, based on current facts and circumstances.[117] Of these potential Commission-Identified Issuers candidates, 18.2 percent filed annual disclosures using Form 10–K while 78.2 percent are Form 20–F filers. No filings submitted by potential candidates were made using Forms 40–F or N–CSR. Among filers, approximately 22 percent were incorporated in the United States while 78 percent were incorporated in foreign jurisdictions, including 4.8 percent who self-disclosed to be state-owned enterprises. These registrants' securities either are listed on a national exchange (88.7 percent), OTC-listed (9.9 percent), or report no U.S. listing (1.5 percent).[118] Of the 273 Commission-Identified Issuers, five are listed in the Annex to Executive Order 14032 as issuers that are affiliated with the Chinese military.[119] Additionally, a recent study found that 42 percent of US-listed Chinese firms disclosed using a VIE structure in year 2013.[120]

b. Investors

The amendments may impact both current investors in affected registrants as well as potential investors that may consider investing in these registrants in the future. As mentioned above, at least some of the information elicited by the required disclosures is likely to be available already to investors through various existing channels, such as vendor databases or various third-party reports, but at varying costs. As such, we expect that the required disclosures are likely to affect mostly retail investors who directly invest or consider investing in affected registrants since it may be more costly for these investors to obtain such information absent the required disclosures. Institutional or other sophisticated investors may also be impacted by the amendments; however, we expect that such impact might be limited given their resources to obtain the required information from other sources (*e.g.,* vendor databases), when such sources are available.

C. Economic Effects

1. Benefits and Costs of HFCA Act Disclosure Requirements

For Commission-Identified Foreign Issuers, the amendments will require specific disclosures to be made in these registrants' annual reports.[121] In general, as discussed above, the required disclosures elicit information that some academic literature has found is value-relevant to investors. As such, we expect the required disclosures to be beneficial to investors because they are likely to reduce search costs when the information in the required disclosure is otherwise available through diverse sources or existing disclosures, and also potentially provide investors with information about aspects of these registrants' governance characteristics that otherwise might not be available or relatively costly to obtain. We do not expect significant compliance costs for Commission-Identified Foreign Issuers given that these registrants likely already possess the information required by the amendment; however, registrants may incur additional compliance costs if the required information is not readily accessible to them or needs to be formatted for the required disclosure.

a. Investors

The amendments will require disclosure that a registered public accounting firm that the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction has issued an audit report for the registrant. The disclosure will provide transparency about the inspection status of the engaged audit firm. As discussed above, the academic literature provides evidence that the PCAOB's oversight has led to improvements in audit quality and financial reporting quality, for both domestic and foreign issuers. The inability of the PCAOB to inspect the auditors of these registrants could generate uncertainty regarding their financial reporting quality. Thus, to the extent this information is new to investors,[122] we expect the specific required disclosure to potentially facilitate investors' capital allocation decisions. We further expect that the presentation of such information in a standardized form in the annual report is likely to be helpful to investors by reducing their search costs.

The amendments will require disclosure of the percentage of the shares of the registrant owned by a government entity in the foreign jurisdiction. As discussed above, government ownership is information that is likely relevant to investors' capital allocation decisions. For example, disclosure of government ownership may allow investors to better assess potential political risks/effects

[116] As noted above, the amendments may accelerate responses to other aspects of the HFCA Act, such as switching audit firms or exiting the U.S. markets altogether. These responses could impact parties beyond those identified below (*e.g.,* audit firms). For purposes of this economic analysis, we focus on those parties affected by the interim final amendments.

[117] Analysis is based on staff review of data obtained from the PCAOB (*see supra* note 110), Audit Analytics, manual review of all annual reports filed by foreign issuers using Forms 20–F, 40–F, or an amendment thereto in calendar year 2020, and review of securities registered in calendar year 2020 by foreign issuers. This analysis may potentially be viewed as an upper bound on the future number of registrants that may be affected by the HFCA requirements as clients of those firms previously identified by the PCAOB.

[118] Using a more conservative approach that looked only to registrants with at least one annual report filed after the introduction of the HFCA Act, we further estimate that in calendar year 2020, 194 registrants submitted an annual report (Form 10–K, 20–F, or an amendment) whose auditor was previously identified by the PCAOB (*see supra* note 110) as a registered firm from a non-U.S. jurisdiction where necessary access to conduct oversight was denied due to a position taken by local authorities. Based on our historical analysis of these registrants, 18 percent submitted annual reports using a domestic form, while 82 percent and zero percent submitted their annual reports via foreign filings Form 20–F and Form 40–F, respectively. Based on the same population of registrants, we estimate that approximately three percent of potentially affected registrants disclosed their securities as listed on two or more foreign exchanges, approximately nine percent listed on only one foreign exchange, while approximately 79 percent only disclosed listing on a U.S. national exchange. Of these registrants, 13 (equal to six percent) self-identified in their 2020 disclosures as state-owned enterprises.

[119] Executive Order 14032, titled ''Addressing the Threat From Securities Investments That Finance Certain Companies of the People's Republic of China,'' was signed by United States President Joe Biden on June 3, 2021, and came into effect on August 2, 2021 [86 FR 30145, (June 7, 2021)]. It generally prohibits U.S. persons from purchasing or selling securities of issuers identified as Communist Chinese Military-Industrial Companies. The annex to the Executive order includes a list of such companies as determined by the US Treasury.

[120] Justin Hopkins, Mark H. Lang & Jianxin (Donny) Zhao, *The Rise of US-Listed VIEs from China: Balancing State Control and Access to Foreign Capital,* Darden Business School Working Paper No. 3119912, Kenan Institute of Private Enterprise Research Paper No. 19–17 (2018), available at *http://dx.doi.org/10.2139/ssrn.3119912.*

[121] *See supra* Section II.B for a detailed description of the disclosure requirements mandated by Section 3 of the HFCA Act.

[122] *See supra* Section IV.B.1 for a description of current practice and regulatory requirements regarding disclosure of the registrant's auditor inspection status.

related to government ownership in the foreign jurisdiction that may influence the value of their investment. These benefits would be limited to the extent that affected registrants already provide disclosure relevant to assessing such risks.

In addition to the disclosure of ownership through equity holdings, the amendments will require affected registrants to disclose whether a governmental entity has a controlling financial interest in the registrant. We expect such disclosure may benefit investors as it could provide information about other mechanisms, besides direct equity ownership, such as control through a pyramidal ownership structure that might allow a governmental entity to influence registrants' operational and other decisions. This information would provide additional insight into potential risks to investors that might arise from such control/ownership structures.[123] One commenter agreed that such disclosure will be informative for investors.[124]

The amendments also require disclosure of board members' affiliations with the CCP and whether the articles of incorporation of the registrant (or equivalent organizing document) includes any charter of the CCP, including the text of any such charter. These disclosures will enhance existing information on the composition of the board and could increase insight into its quality and the related consequences for firm value. One study shows that the degree of a board's political affiliation in China is related to firm value, and this varies based on facts and circumstances.[125] For example, political affiliation of board members may imply that their incentives may not align with shareholders' interests. Under different circumstances, politically-connected board members may facilitate the execution of financing transactions for the registrant. To the extent that these disclosures may benefit investors by facilitating their efforts to evaluate characteristics of registrants that may have an impact on the value of their investments, these specific disclosures may facilitate investors' capital allocation decisions and potentially increase investor protection.

In a modification to the interim final rule, the final rules will specify that the registrant must look through a VIE or any structure that results in additional foreign entities being consolidated in the financial statements of the registrant and provide disclosure about the operating company in the relevant jurisdiction. Thus, any Commission-Identified Foreign Issuer that uses a VIE or other similar corporate structure will be required to provide the required disclosures for itself and its foreign operating entity. This change will benefit investors by providing more accurate information regarding the true ownership structure of Commission-Identified Foreign Issuers. One commenter suggested that a VIE structure could block meaningful disclosure of financial and political information.[126]

In another change from the interim final rule, the final amendments will include a new Inline XBRL tagging requirement: Registrants will have to tag the auditor name, jurisdiction, and the PCAOB ID Number(s) of the audit firm(s) that appear on the audit report signed by the registered public accounting firm in the registrant's Form 10–K, Form 20–F, and Form 40–F. Such tagging requirement will likely benefit investors by providing them with machine-readable information on auditors directly from a registrant's annual report, thus allowing them to identify registrants with auditors from jurisdictions that do not allow PCAOB oversight. This change will also facilitate the Commission's accurate and efficient identification of Commission-Identified Issuers. Since registrants already use Inline XBRL tagging in their annual reports and other filings with the commission, and the information on auditor name and jurisdiction is readily available to them, we do not believe this change will result in a significant cost increase for them.

b. Registrants

The required disclosures are likely to impose some compliance costs on Commission-Identified Foreign Issuers. One commenter asserted that the proposed disclosures were repetitive of disclosure that is already provided and would result in unnecessary compliance costs.[127] We do not expect these compliance costs to be significant since these registrants likely already possess the information required by the amendments. However, to the extent that such information is not readily accessible or needs to be formatted to comply with the required disclosure, registrants would incur additional costs.[128]

The required disclosures may impact the cost of capital for some affected registrants. As discussed above, empirical evidence suggests that the information elicited by the required disclosures is, in general, related to potential risks and more broadly to firm value.[129] We discuss the potential impact of the required disclosures on affected registrants' cost of capital further below, but note that the magnitude of any such impact is likely to be moderated depending on the extent information is otherwise available to investors.

The required disclosure regarding the use of a non-inspected firm to audit the registrant's annual report, which will now be required in a standardized manner, may lead investors to re-evaluate potential risks related to financial reporting quality due to the inability of the PCAOB to inspect the auditors of these registrants. Some academic literature finds that PCAOB oversight is broadly related to improvements of audit quality, and also investor perceptions of such audit quality.[130] As described above, many registrants already disclose the risks or decreased benefits associated with using a non-inspected auditor.[131] Given the extent to which information specifically required in the new disclosures overlaps with disclosures already observed in practice, in addition to the information being available from other sources such as the PCAOB, we expect the impact of these specific required disclosures on affected registrants' cost of capital to be small.

Section 3 of the HFCA Act also requires registrants to disclose information in a standardized manner in annual reports about their ownership and control structures, including the magnitude of direct equity ownership

[123] *See, e.g.,* Jesse Fried & Ehud Kamar, *Alibaba: A Case Study of Synthetic Control,* European Corporate Governance Institute Working Paper Series in Law, Paper No 533/2020 (2020) (concluding that control of a firm can be exerted not only through equity, but through a mixture of employment, contractual, and commercial arrangements).

[124] *See* letter from ASA.

[125] *See* Lihong Wang, *Protection or Expropriation: Politically Connected Independent Directors in China,* 55 J. Bank. Fin. 92 (2015) (using a sample of Chinese listed firms over the 2003–2012 period, the study finds that while the presence of politically connected independent directors is related to increased firm value for private firms, the presence of politically connected independent directors is related to lower firm value for state-owned enterprises (''SOEs''). The study also finds an increase in related-party transactions for Chinese listed firms with politically connected independent directors).

[126] *See* letter from Kelly.

[127] *See* letter from China Petroleum.

[128] For the purpose of the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* we estimate that affected registrants will incur on average one burden hour to prepare and review the information needed for the HFCA Act Section 3 disclosure requirements. *See infra* Section V.C.

[129] *See supra* Section IV.A.

[130] *See id.*

[131] *See supra* Section IV.B.1.

by a government in non-cooperating foreign jurisdictions and the degree of control a government in the non-cooperating jurisdiction may exert on the registrant through channels other than ownership. Providing standardized disclosure could facilitate more efficient comparisons of government ownership and control information across Commission-Identified Foreign Issuers and thus reduce investor search costs.

The amendments also will require registrants to disclose information about potential additional links to the CCP. Such disclosure is likely to be informative of the registrant's governance, and may also lead investors to re-assess potential political risks that may not have been previously known through existing registrants' disclosures. For example, such links between the registrant and the CCP may indicate increased political influence on registrants' decision-making processes and consequent impacts on registrants' value. While some, but not all, of the information in the required disclosures may already be publicly available through disclosures in forms other than in annual reports, the content of such disclosures may not be standardized across registrants. We expect these specific disclosures may potentially impact registrants' cost of capital, particularly for registrants about which such information is not otherwise known by the market.

2. Benefits and Costs of HFCA Act Submission Requirement

The amendments implementing the submission requirement of Section 104(i)(1)(B) of the Sarbanes-Oxley Act (as added by Section 2 of the HFCA Act) provide that a Commission-Identified Issuer that is not owned or controlled by a foreign governmental entity in a foreign jurisdiction that prevents PCAOB inspections must submit documentation to the Commission that establishes that the registrant is not so owned or controlled. As discussed above, the amendments specify that if an affected registrant is owned or controlled by a foreign governmental entity, it will not be required to submit such documentation. We estimate in the baseline that a large majority of current registrants that are potential future Commission-Identified Issuers are also foreign issuers that will be subject to the disclosures required by Section 3 of the HFCA Act. Therefore, we expect the submission requirement to serve as a complement to these required disclosures.

a. Investors

We anticipate that requiring Commission-Identified Issuers to provide documentation to support a lack of foreign control will provide further reassurance to investors that the registrants' disclosures in this regard are materially accurate and complete. In particular, because the submission requirement generally would apply to those Commission-Identified Issuers who otherwise do not disclose that they are owned or controlled by a foreign governmental entity, this requirement will provide some reassurance to investors that such control does not exist. We believe that greater certainty about which Commission-Identified Issuers lack governmental ownership and control may improve investors' assessments of the risks of investing in Commission-Identified Issuers' securities. One commenter suggested that registrants typically are not providing the detailed disclosures required by the HFCA Act and that current risk factor disclosure tends to be insufficient for investors to understand the consequences of non-inspection.[132] Since the submitted documentation will be publicly available, we expect the reassurance benefit to be larger than if the submission were available only to the Commission. Because affected registrants will have flexibility to determine the specific types of documentation to submit to the Commission, we expect the magnitude of the reassurance benefit to depend on the nature of information issuers submit. We generally expect this reassurance benefit to be limited given the HFCA Act's required Section 3 disclosure and other information about ownership and control required by existing Commission rules.[133]

Because we expect the submission requirement to impose (on average) only minor compliance costs on affected registrants and no other significant costs, we also do not generally expect any significant negative effects on investors from this requirement, such as a reduction in the prices of affected registrants' securities they currently own.

b. Registrants

Commission-Identified Issuers who lack ownership or control by a governmental entity in the foreign jurisdiction of the registered public accounting firm that the PCAOB is unable to inspect or investigate completely will incur some direct compliance costs related to producing the documentation they will be required to submit to the Commission. The magnitude of these compliance costs will depend on how easily the affected registrants can produce documentation to satisfy the submission requirement. The amendments do not specify particular types of documentation that can or must be submitted to satisfy this requirement. Affected registrants will thus have flexibility to determine how best to establish that they are not owned or controlled by a foreign governmental entity. This should help limit compliance costs, as registrants will be able to produce documentation that is suited to their particular circumstances. At the same time, at least as an initial matter, uncertainty about the scope of the requirement could lead some registrants to seek additional advice from attorneys and other advisers, which could marginally increase compliance costs. Overall, because we expect that affected registrants will have information readily available about their ownership structures and controlling parties, we expect the direct compliance costs associated with this requirement will be minor.[134]

3. Impact on Efficiency, Competition, and Capital Formation

As discussed above, the required disclosures may provide new or more easily accessible information about whether registrants have retained non-inspected registered auditors and whether such registrants are owned or controlled by governmental entities of the foreign jurisdictions that prevent PCAOB inspections. To the extent this disclosed information is new or reduces search costs, we expect it could potentially reduce information asymmetries in securities markets, thereby improving price efficiency and helping investors achieve more efficient portfolio allocations. Overall, we believe that any efficiency gains will be modest since the potential increase in informational content and reduction in search costs to investors is likely to be limited given existing disclosures.

To the extent the amendments will reduce information asymmetries, affected registrants may experience a change in cost of capital (either a reduction or an increase is possible, depending on circumstances), which may in turn affect capital formation. However, similar to any effects on efficiency, we expect such capital formation effects to be small in aggregate. Likewise, we do not expect

[132] *See* letter from U.S. Acctg. Academics.

[133] *See supra* Section IV.B.1 for a description of current regulatory requirements regarding disclosure of ownership and control more generally.

[134] *See supra* note 128.

the amendments to significantly impact overall competition, based on the expected low compliance costs for registrants and the expected limited incremental impact on investors' information environment. However, we do not rule out that there could be instances where the required disclosures provide new information about some registrants that could potentially impact (either positively or negatively) their individual competitive situation due to investors' reassessment of such registrants' risk and prospects.

V. Paperwork Reduction Act

A. Background

Certain provisions of Form 10–K and Form 20–F that will be affected by the amendments contain ''collection of information'' requirements within the meaning of the PRA.[135] The Commission is submitting the final amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[136] The titles for the collections of information are:

- ''Form 10–K'' (OMB Control No. 3235–0063); and
- ''Form 20–F'' (OMB Control No. 3235–0288).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The affected forms were adopted under the Exchange Act and set forth the disclosure requirements for annual reports filed by registrants to help investors make informed investment decisions. The hours and costs associated with preparing and filing the forms constitute reporting and cost burdens imposed by each collection of information.

B. Summary of the Amendments

As described in more detail above, we are adopting final amendments to implement the disclosure and submission requirements of the HFCA Act. The amendments will require certain disclosure from foreign issuers relating to foreign jurisdictions that prevent PCAOB inspections and require all applicable registrants to submit documentation to the Commission establishing that such a covered issuer is not owned or controlled by a governmental entity in that foreign jurisdiction.

C. Burden and Cost Estimates Related to the Amendments

We anticipate that new disclosure and submission requirements will increase the burdens and costs for these registrants. We derived our burden hour and cost estimates by estimating the average amount of time it would take a registrant to prepare and review the required disclosure and submission, as well as the average hourly rate for outside professionals who assist with such preparation. In addition, our burden estimates are based on several assumptions. For the HFCA Act Section 3 disclosure requirements we estimated the number of affected registrants by determining the number of foreign issuer registrants that retained registered public accounting firms that issued an audit report and are located in a jurisdiction where obstacles to PCAOB inspections exist. For the Section 104(i)(1)(B) of the Sarbanes-Oxley Act (as added by Section 2 of the HFCA Act) submission requirements, we estimated the number of affected registrants by determining the number of registrants that retained registered public accounting firms that issued an audit report and are located in a jurisdiction where obstacles to PCAOB inspections exist. Based on these estimates, for purposes of the PRA, we estimate that there will be:

- No affected Form 10–K filers for the HFCA Act Section 3 disclosure requirements and 55 affected filers for the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement; and
- Two hundred and twenty affected Form 20–F filers for the HFCA Act Section 3 disclosure requirements and 206 affected filers for the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement.[137]

Commission-Identified Issuers will generally have information readily available about their audit arrangements, ownership structures, and controlling parties. Therefore, we estimate that the average incremental burden for an affected registrant to prepare the submission would be one hour and for an affected registrant that is a foreign issuer to prepare the disclosure would be one hour. These estimates represent the average burdens for all affected registrants, both large and small.[138] In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their operations. We believe that some registrants will experience costs in excess of this average and some registrants may experience less than the average costs.

The table below shows the total annual compliance burden, in hours and in costs, of the collection of information resulting from the final amendments.[139] The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and

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[135] *See supra* note 128. As noted in the Economic Analysis section, *see supra* Section IV, based on recent Form 40–F filings, no Form 40–F registrants reported having retained a registered public accounting firm located in a foreign jurisdiction that we believe the PCAOB may determine it is unable to inspect or investigate completely because of a position taken by an authority in that foreign jurisdiction, and therefore we estimate that no Form 40–F registrants will be subject to the requirements of the final amendments upon their adoption. Accordingly, we are not making any revisions to the PRA burden estimates for Form 40–F at this time. Additionally, based on recent Form N–CEN filings, no registered investment company reported having retained a registered public accounting firm located in a foreign jurisdiction, and therefore we estimate that no registered investment companies will be subject to the requirements of the final amendments upon their adoption. Accordingly, we are not making any revisions to the PRA burden estimates for Form N–CSR at this time. *See supra* note 33.

[136] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[137] *See supra* Section IV.B.2.a. Based on the data and analysis described in Section IV above, for purposes of the PRA we estimate that approximately 275 registrants may be affected by the rules, of which we estimate 20 percent are U.S. registrants that file on Form 10–K (55 registrants) and 80 percent are foreign issuers that file on Form 20–F (220 registrants). For purposes of the HFCA Act Section 3 disclosure requirement, we estimate that only foreign filers filing on Form 20–F will be required to provide the disclosure (220 registrants). For purposes of the Section 104(i)(1)(B) of the Sarbanes-Oxley Act submission requirement, we estimate that approximately five percent of the affected registrants are state-owned entities and will not be required to prepare the submission. As a result, we estimate that U.S. registrants that file on Form 10–K (55 registrants) and foreign issuers that file on Form 20–F but are not state-owned entities (206) will be required to provide the submission.

[138] As discussed above in Section II.C., the final amendments also include structured data tagging requirements pertaining to the auditor name and jurisdiction on the audit report signed by the registered public accounting firm in the registrant's Form 10–K, Form 20–F, and Form 40–F. However, we believe that any associated burden resulting from this requirement will be encompassed within the overall PRA burden estimates for these forms because the final amendments add only a few discrete data points to an affected registrant's existing tagging obligations. Affected registrant are currently required to tag specified information in the relevant forms. *See generally* 17 CFR 232.405 (Rule 405 Regulation S–T) and 232.406 (Rule 406 of Regulation S–T), paragraphs 101 and 104 to ''Instructions as to Exhibits'' in Form 20–F, paragraphs 15 and 17 to General Instruction B in Form 40–F.

[139] The table's estimated number of responses aggregates the responses for both the disclosure requirement and the submission requirement. Some registrants will be counted twice, once for each response. For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

review the required information. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the registrant internally is reflected in hours. For purposes of the PRA, we estimate that 75 percent of the burden of preparation of Form 10–K and Form 20–F is carried by the registrant internally and that 25 percent of the burden of preparation is carried by outside professionals retained by the registrant at an average cost of $400 per hour.[140]

TABLE 1—INCREMENTAL PAPERWORK BURDEN UNDER THE FINAL AMENDMENTS

	Estimated number of affected responses	Incremental burden hours/form	Total incremental burden hours	75% Company	25% Professional	Professional costs
	(A)	(B)	(C) = (A) * (B)	(D) = (C) * 0.75	(E) = (C) * 0.25	(F) = (E) * $400
Form 10–K (submission)	55	1	55	41	14	$5,600
Form 20–F (submission)	206	1	206	155	52	20,800
Form 20–F (disclosure) ..	220	1	220	165	55	22,000

VI. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 2 and 3 of the HFCA Act, Section 104 of the Sarbanes-Oxley Act, Sections 3, 12, 13, 15(d), and 23(a) of the Exchange Act, and Sections 8(b), 24(a), 30(a), and 38(a) of the Investment Company Act.

List of Subjects in 17 CFR Parts 200, 232, and 249

Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

In accordance with the foregoing, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

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

Subpart A—Organization and Program Management

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

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

* * * * *

Section 200.30–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b) 78l, 78m, 78n, 78*o*(d).

* * * * *

■ 2. Amend § 200.30–1 by adding to paragraph (m) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(m) With respect to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214 (as amended by Pub. L. 116–222)), to identify each ''covered issuer,'' as that term is defined in Section 104(i)(1)(A) of the Sarbanes-Oxley Act of 2002, that has retained a registered public accounting firm to issue an audit report where that registered public accounting firm has a branch or office that is located in a foreign jurisdiction and Public Company Accounting Oversight Board has determined that it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction.

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, 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.

* * * * *

■ 4. Effective January 10, 2022, through July 1, 2023, amend § 232.405 by adding paragraph (c)(1)(iii)(C) to read as follows:

§ 232.405 Interactive Data File submissions.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(C) *Additional elements.* Annual reports on forms 10–K, 20–F or 40–F filed for periods after December 15, 2021, must contain all applicable data elements from the most recently updated relevant standard taxonomy; and

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for part 249 and sectional authority citations for §§ 249.220f, 249.240f, 249.310, and 249.331 continue to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063.

Section 249.240f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.331 is also issued under 15 U.S.C. 78j–1, 7202, 7233, 7241, 7264, 7265; and 18 U.S.C. 1350.

* * * * *

■ 6. Amend Form 20–F (referenced in § 249.220f) by revising Item 16I.(b) to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

[140] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs will be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

United States Securities and Exchange Commission

Washington, DC 20549

Form 20–F

* * * * *

Part II

* * * * *

Item 16I. Disclosure Regarding Foreign Jurisdictions That Prevent Inspections

* * * * *

(b) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b–4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 20–F, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must provide the below disclosures. Also, any such identified foreign issuer that uses a variable-interest entity or any similar structure that results in additional foreign entities being consolidated in the financial statements of the registrant is required to provide the below disclosures for itself and its consolidated foreign operating entity or entities. A registrant must disclose:

* * * * *

■ 7. Amend Form 40–F (referenced in § 249.240f) by revising paragraph B.18(b) to read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

(18) Disclosure Regarding Foreign Jurisdictions That Prevent Inspections

* * * * *

(b) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b–4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 40–F, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must provide the below disclosures. Also, any such identified foreign issuer that uses a variable-interest entity or any similar structure that results in additional foreign entities being consolidated in the financial statements of the registrant is required to provide the below disclosures for itself and its consolidated foreign operating entity or entities. A registrant must disclose:

* * * * *

■ 8. Amend Form 10–K (referenced in § 249.310) by revising Item 9C(b) to Part II to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form 10–K

* * * * *

Part II

* * * * *

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

(b) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b–4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)) as having retained, for the preparation of the audit report on its financial statements included in the Form 10–K, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must provide the below disclosures. Also, any such identified foreign issuer that uses a variable-interest entity or any similar structure that results in additional foreign entities being consolidated in the financial statements of the registrant is required to provide the below disclosures for itself and its consolidated foreign operating entity or entities. A registrant must disclose:

* * * * *

■ 9. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by revising paragraph (j) to Item 4 to read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities And Exchange Commission

Washington, DC 20549

Form N–CSR

* * * * *

Item 4. Principal Accountant Fees and Services

* * * * *

(j) A registrant that is a foreign issuer, as defined in 17 CFR 240.3b–4, identified by the Commission pursuant to Section 104(i)(2)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214(i)(2)(A)), as having retained, for the preparation of the audit report on its financial statements included in the Form N–CSR, a registered public accounting firm that has a branch or office that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board has determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction, for each year in which the registrant is so identified, must provide the below disclosures. Also, any such identified foreign issuer that uses a variable-interest entity or any similar structure that results in additional foreign entities being consolidated in the financial statements of the registrant is required to provide the below disclosures for itself and its consolidated foreign operating entity or entities. A registrant must disclose:

* * * * *

By the Commission.

Dated: December 2, 2021.

Vanessa A. Countryman,

Secretary.

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

[Docket No. 211115–0233]

RIN 0625–AB20

Procedures and Rules for Article 10.12 of the United States-Mexico-Canada Agreement

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of Commerce (Commerce) is issuing this interim final rule to amend its regulations pertaining to the procedures and rules related to Article 1904 of the North American Free Trade Agreement (NAFTA) with appropriate references to the United States-Mexico-Canada Agreement (USMCA), which went into effect on July 1, 2020. Article 10.12 of the USMCA, like NAFTA Article 1904, provides a dispute settlement mechanism for purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico. Commerce is amending its regulations to replace references to Article 1904 of NAFTA with references to Article 10.12 of the USMCA; to update outdated cross-references to Commerce's antidumping and countervailing duty regulations; update outdated notice, filing, service, and protective order procedures; and adopt other minor corrections and updates.

DATES:

Effective date: This interim final rule is effective on December 9, 2021. This interim final rule does not apply to any binational panel review under NAFTA, or any extraordinary challenge arising out of any such review, that was commenced before July 1, 2020.

Comment date: To be assured of consideration, written comments on the interim final rule must be received no later than January 10, 2022.

ADDRESSES: Submit comments only through the Federal eRulemaking Portal at *http://www.Regulations.gov*, Docket No. ITA–2021–0006. Due to the COVID–19 situation, Commerce is not able to accept comments submitted by mail or hand-delivery at this time. All comments submitted during the comment period permitted by this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at *http://www.Regulations.gov*. Commerce will not accept response comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance Communications office at (202) 482–0063 or *ECCommunications@trade.gov*.

FOR FURTHER INFORMATION CONTACT: Jessica Link at (202) 482–1411.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2018, the ''Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Protocol) was signed to replace the North American Free Trade Agreement (NAFTA). The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the USMCA) [1] is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the ''Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Amended Protocol), which the Office of the United States Trade Representative (USTR) signed on December 10, 2019. The USMCA entered into force on July 1, 2020.[2]

Article 10.12 of the USMCA, like NAFTA Article 1904, provides a dispute settlement mechanism for purposes of reviewing antidumping and countervailing duty determinations issued by the United States, Canada, and Mexico. The procedures and rules for binational panel review of antidumping and countervailing duty administrative determinations under Article 10.12 of the USMCA are virtually unchanged from Article 1904 of NAFTA.

Sections 421–433 and 504 of the USMCA Implementation Act provide technical and conforming amendments to the Tariff Act of 1930, as amended (the Act) related to Chapter 10 of the USMCA on antidumping and countervailing duty matters. The Statement of Administrative Action accompanying the USMCA Implementation Act provides that, ''[i]n substance, U.S. laws and regulations are already in conformity with the obligations assumed under [Chapter 10 of the USMCA,]'' and, therefore, ''no changes in administrative regulations, practices, or procedures are required to implement the. . .antidumping and countervailing duty related provisions of Chapter 10.'' [3]

Pursuant to Article 10.12.14 of the USMCA, the United States, Mexico, and Canada trilaterally negotiated and agreed to rules of procedure for binational panel review modifying and updating the previous rules of procedure for Article 1904 of NAFTA. Effective May 18, 2021, Decision No. 2 of the USMCA Free Trade Commission adopted the rules of procedure applicable to all binational panel reviews under the USMCA. The rules of procedure are contained in Annex II to that decision and are cited as the Article 10.12 Binational Panel Rules.[4]

Commerce's regulations, 19 CFR part 356 (procedures and rules for the implementation of NAFTA Article 1904) were first promulgated in 1994 and have not undergone any updates since that time. Although not required by the USMCA Implementation Act, Commerce is amending its regulations

[1] The Agreement Between the United States of America, the United Mexican States, and Canada is the official name of the USMCA treaty. Please be aware that, in other contexts, the same document is also referred to as the United States-Mexico-Canada Agreement.

[2] Mexico, Canada, and the United States certified their preparedness to implement the USMCA on December 12, 2019, March 13, 2020, and April 24, 2020, respectively. Pursuant to section 106 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4205) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the United States adopted the USMCA through the enactment of the United States—Mexico—Canada Agreement Implementation Act (USMCA Implementation Act), Public Law 116–113, 134 Stat. 11 (19 U.S.C. Chapter 29), on January 29, 2020. Pursuant to paragraph 2 of the Protocol, which provides that the USMCA will take effect on the first day of the third month after the last signatory party provides written notification of the completion of the domestic implementation of the USMCA through the enactment of implementing legislation, the USMCA entered into force on July 1, 2020. On December 27, 2020, subsequent to the USMCA's entry into force date of July 1, 2020, the Consolidated Appropriations Act, 2021 (Appropriations Act), Public Law 116–260, was enacted with Title VI of the Act containing technical corrections to the USMCA Act. All of the changes contained within Title VI of the Appropriations Act are retroactively effective on July 1, 2020.

[3] Statement of Administrative Action accompanying the USMCA Implementation Act at 26.

[4] *Available at: https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/free-trade-commission-decisions/usmca-free-trade-commission-decision-no-2*. The Secretariat of the USMCA, comprised of a Canadian section, a United States section and a Mexican section, is responsible for the administration of the binational panel review process.

pertaining to the procedures and rules governing the binational panel dispute settlement mechanism to review antidumping duty and countervailing duty determinations issued by the United States as set forth in the USMCA. Because the dispute settlement mechanism in USMCA Article 10.12 is substantively identical to that in NAFTA Article 1904, Commerce is adopting non-substantive amendments to ensure that its rules appropriately reference the USMCA. Commerce is also adopting additional non-substantive amendments, including updating outdated cross-references to Commerce's antidumping and countervailing duty regulations (19 CFR part 351), updating outdated notice, filing, service, and protective order procedures, and adopting other minor corrections and updates. These changes are explained in the preamble of this interim final rule and reflected in the regulatory text below.

Explanation of Regulatory Updates

1. Updates To Reflect the Enactment of the USMCA

Commerce's regulations in 19 CFR part 356 implement procedures for disputes pursuant to Article 1904 of NAFTA. Because NAFTA was replaced pursuant to the enactment of the USMCA, Commerce's regulations in this section require updates to reflect the name of the new agreement and the relevant chapter contained in the new Agreement. Therefore, Commerce is adopting several changes throughout part 356 to replace references to NAFTA with references to the USMCA. Commerce is also adopting several changes throughout part 356 to replace references to section 402(g) of the North American Free Trade Agreement Implementation Act of 1993 with reference to section 412(g) of the United States-Mexico-Canada Agreement Implementation Act of 2020, which authorizes Commerce to promulgate such regulations as necessary or appropriate to implement its responsibilities under chapter 10 of the USMCA.[5]

These changes are reflected in the title of part 356 and §§ 356.1, 356.2(d), 356.2(f), and 356.2(kk) (replacing references to North American Free Trade Agreement or NAFTA with United States-Mexico-Canada Agreement or USMCA); §§ 356.1, 356.2(f), 356.2(o), 356.2(p), 356.2(cc)(3), 356.10(b)(1)(ii)(B), 356.11(a)(1)(i), and 356.11(b)(2)(ii) (replacing references to Article 1904 of NAFTA with Article 10.12 of USMCA); §§ 356.2, 356.3, 356.4, 356.10(b)(4)(i), 356.11(a)(5)–(6) (replacing references to Article 1904 Panel Rules with Article 10.12 Binational Panel Rules); § 356.1 (replacing references to section 402(g) of the North American Free Trade Agreement Implementation Act of 1993 with section 412(g) of the United States-Mexico-Canada Implementation Act of 2020); § 356.2 (replacing the signing date of NAFTA, December 17, 1992 with the signing date of the amended USMCA, November 30, 2018); §§ 356.2(h), 356.2(p), and 356.2(w) (replacing references to Chapter Nineteen with Chapter Ten); § 356.2(h) (replacing references to Annex 1901.2 with Annex 10–B.1); in § 356.2(p) (replacing references to Annex 1904.13 with Annex 10–B.3); § 356.2(q) (replacing references to Article 1911 with Article 10.8); § 356.2(ff) (replacing references to Article 2002 with Article 30.6); and § 356.2(r) (replacing references to section 516A(f)(9) of the Act with section 516A(f)(10) of the Act).

Commerce is also removing several references to the United States-Canada Free Trade Agreement, which was superseded by NAFTA. Commerce's regulations contained provisions governing dispute resolution pursuant to the United States-Canada Free Trade Agreement. Because there are no active disputes pursuant to that agreement, Commerce is removing reference to it throughout its regulations. These changes are reflected in §§ 356.2(d), 356.10(c)(1)(ii), and 356.11(c)(1)(ii).

2. Updates To Address Obsolete Regulatory Cross-References

Commerce is also updating outdated regulatory cross-references in 19 CFR part 356 to 19 CFR parts 353 (addressing antidumping duty rules and procedures) and 355 (addressing countervailing duty rules and procedures) which became obsolete when Commerce consolidated parts 353 and 355 into a single part 351 in 1997.[6] Despite the 1997 consolidation, references to obsolete parts 353 and 355 remain in part 356. Therefore, Commerce is removing obsolete cross-references to parts 353 and 355 and replacing them with updated references to part 351 to reflect the 1997 consolidation of the AD/CVD regulations and any relevant subsequent regulatory changes Commerce made to part 351 thereafter.[7]

These changes are reflected in § 356.2(u) (replacing cross-references to 19 CFR 353.31(e)(2)(i) through (v) or 355.31(e)(2)(i) through (v) with 19 CFR 351.303(d)(2), which outline Commerce's current requirements for document submissions with respect to specifications and first page ''letter of transmittal'' markings); §§ 356.7(b) and 356.8(d) (replacing cross-references to 19 CFR 353.31(d), (e)(2) and 19 CFR 355.31(d), (e)(2) with references to 19 CFR 351.303(b) and 19 CFR 351.303(d)(2), which outline Commerce's current format and filing requirements for document submissions); § 356.7(c) and 356.8(d) (replacing cross-references to 19 CFR 353.31(g) and 19 CFR 355.31(g) with reference to current 19 CFR 351.303(f) which outlines Commerce's current service requirements).

3. Updates To Address Outdated Notice, Filing, Service, and Protective Order Procedures

Commerce is also updating its regulations relating to certain outdated notice procedures. Specifically, current §§ 356.6 and 356.7 provide that Commerce will notify governments of Free Trade Agreement (FTA) Countries of scope determinations and contemplate that such determinations not be published in the **Federal Register**.[8] Under current § 356.6, when Commerce makes a scope determination, notice of such scope determination shall be deemed received by the Government of an FTA country when a certified copy of the determination is delivered to the chancery of the Embassy of the FTA.

Under Commerce's current procedures, scope rulings under 19 CFR 351.225 are a type of ''class or kind determination,'' a term that also encompasses circumvention determinations under section 781 of the Act. In some instances, a class or kind determination may be published in the **Federal Register**. Otherwise, interested parties will be notified of a

[5] *See* United States-Mexico-Canada Agreement Implementation Act of 2020, Public Law 116–113, 134 Stat. 74 (Jan. 29, 2020); 19 U.S.C. 4582 (2020). *See also* North American Free Trade Agreement Act of 1993, Public Law 103–182, 107 Stat. 2135 (Dec. 8, 1993) (section 402(g) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3432(g)).

[6] *See* 62 FR 27296, 27297 (May 19, 1997) (final rulemaking to eliminate Parts 353 and 355 and promulgate a single Part 351, 19 CFR 351, in their place); *see also* 61 FR 7308, 7310 (Feb. 27, 1996) (''[I]n response to the President's Regulatory Reform Initiative, to reduce the amount of duplicative material in the regulations, the Department has consolidated the antidumping and countervailing duty regulations into a new Part 351, and is removing Parts 353 and 355.'').

[7] *See, e.g.,* 62 FR 27296 (May 19, 1997); 73 FR 3627 (Jan. 22, 2008); 76 FR 39275 (July 6, 2011); 80 FR 36473 (June 25, 2015); and 85 FR 17007 (March 26, 2020).

[8] This language originated in the 1988 interim final rule for the United States-Canada Free Trade Agreement. *See Panel Review Under Article 1904 of the U.S.-Canada Free-Trade Agreement,* 53 FR 53232, 53233 (Dec. 30, 1988 (interim final rule).

determination through other means, including through mailing or electronic means. Section 516A(g)(10) of the Act, as amended by the USMCA Implementation Act, provides that Commerce, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination. However, the statute is silent as to the method of notice to the government of a FTA country, and, therefore, it is left to the discretion of Commerce.[9]

Accordingly, Commerce is revising § 356.6 to state that notice shall be deemed received either on the date on which the class or kind determination is published in the **Federal Register**, or, if the determination is not published, on the date on which Commerce conveys a copy of the determination by electronic notification to the government. Further, in instances in which Commerce does not publish the determination, these changes will require that Commerce: (1) Confirm the appropriate Embassy electronic mail address, and (2) directly convey to the Embassy an electronic copy of the determination during the Embassy's normal business hours. Commerce is also adopting changes to reflect that ''class or kind determination'' is a more accurate term than ''scope determination'' for these types of determinations. Similar edits are reflected in § 356.7. In addition, for ease of reference the definition for scope determination in § 356.2(ee) has been expanded to include reference to class or kind of merchandise determination.

Commerce is also amending §§ 356.10 and 356.11 regarding the procedures for access to proprietary and privileged information during a USMCA binational panel dispute. Current § 356.10 requires a party seeking access to proprietary information to do so by submitting an application for a protective order. Such applications are to be filed with the U.S. section of the USMCA Secretariat, which in turn provides the applications to Commerce. Upon approving the application, Commerce will then issue the protective order to the Secretariat, which in turn will issue the protective order to the original applicant along with other participating parties to the dispute. The procedures in § 356.10(b)(3) have been updated to remove the requirement for manual filing.

Additionally, current § 356.10(b)(4)(ii) provides the method of service by which a protective order may be served. Because this provision does not currently account for service by electronic means, which is now permitted by the U.S. section of the Secretariat under the Article 10.12 Binational Panel Rules, Commerce is adding language to § 356.10(b)(4)(ii)(B) to allow for electronic means as a method of service for protective orders. Further, Commerce is adding an additional provision (§ 356.10(b)(4)(ii)(D)) to reflect that the U.S. section of the Secretariat allows for the filing of documents using an electronic filing platform to satisfy service requirements under the Article 10.12 Binational Panel Rules. Commerce is also adding corresponding language to § 356.10(b)(4)(iii) regarding the date of service if a document is served by electronic means or filed using the electronic filing platform.

Commerce is also revising §§ 356.7(b); 356.8(d)(1); 356.10(b)(3) through (5), 356.10(c)(1)(i), 356.10(c)(2)(i), 356.10(c)(2)(v), 356.10(c)(3), 356.10(c)(4)(i), 356.10(d)(2), 356.11(a)(2) and (3), 356.11(a)(5)(i)–(ii), 356.11(c)(1)(i), 356.11(c)(2) and (3), and 356.11(d)(2) to remove language requiring originals and multiple copies, as such a requirement has been made obsolete. Moreover, Commerce is also revising §§ 356.10(b)(1)(ii)(C), 356.11(b)(2)(iii), 356.12(a)(5), 356.14(d)(2), 356.14(d)(4), and 356.18(c)(4) to remove language requiring parties to return documents released under protective order and to log the use of proprietary documents, as such requirements have become obsolete, and to instead require parties to destroy and certify to the destruction of documents released under protective order.

4. Other Minor Corrections and Updates

Commerce is also adopting minor corrections and updates to part 356 in §§ 356.10(b)(1)(i) and 356.11(b)(1) (updating the address and the room number of the Central Records Unit); §§ 356.7(b) and 356.8(d)(1) (updating the address and the room number of the APO/Dockets Unit); §§ 356.2(ee) and 356.27(d) (correcting punctuation); § 356.2(kk) (correcting the address of the Commerce Department); § 356.2(bb)(2) (updating the name of Mexico's Secretaria de Comercio y Fomento Industrial to the Secretariat of Economy); and § 356.11(c)(3) (adding a missing word in the title of the paragraph). Lastly, Commerce is updating the definition of the term ''director'' as specified in § 356.2(n) to correspond with the current definition in 19 CFR part 354, revised by Commerce in 1998.[10]

Classifications

Administrative Procedure Act

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. The APA (5 U.S.C. 553(b)) provides a statutory exemption to notice-and-comment rulemaking for rules of agency organization, procedure, or practice and when the agency finds for good cause that such procedures are impracticable, unnecessary, or contrary to the public interest. Commerce's amendments to the regulation, 19 CFR 356, fall within this exemption.

Specifically, providing notice of and an opportunity for comment on the amended regulation in advance of its effective date is unnecessary pursuant to the good cause exemption (5 U.S.C. 553(b)(B)). As described above, the first set of amendments reflect revisions already made to U.S. law following the enactment of the USMCA; are already known to parties; or are otherwise necessary to replace outdated references to NAFTA with the USMCA.[11] The second set of amendments address obsolete regulatory cross-references to other parts of Commerce's regulations; are non-substantive and technical in nature; and reflect procedures that are already known to parties.[12] The third set of amendments streamline or remove outdated paper notice, filing, service,

[9] Similarly, the relevant language in USMCA Article 10.12.4 does not specify the method by which the importing Party must notify the other involved Party of determinations not published in the official journal: ''In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice.'' Nor do the Article 10.12 Binational Panel Rules, which state at Article 39(2)(c) that a Request for Panel Review must contain ''the date on which the notice of the final determination was received by the other Party if the final determination was not published in an official publication.'' There are no specific requirements on the method of notification.

[10] *See Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order,* 85 FR 24391, 24400, 24403 (May 4, 1998) (final rule) (revising the definition of the term ''director'' in 19 CFR 354.2 to include ''Senior APO Specialist'' and to conform with changes in office director positions following an internal reorganization).

[11] *See* changes described above under ''Updates to Reflect the Enactment of the USMCA.''

[12] *See* changes described above under ''Updates to Address Obsolete Regulatory Cross-references.''

and protective order requirements and procedures that have been replaced by electronic requirements and procedures.[13] Certain of these procedures have already been adopted by the United States, Mexico, and Canada under the Article 10.12 Binational Panel Rules; are already known to parties; or are otherwise necessary to remove outdated and burdensome requirements.[14] Further, the amendments allowing for electronic notification of class or kind of merchandise determinations, in lieu of in-person notification, are necessary and appropriate in light of COVID–19.[15] Lastly, the fourth set of amendments reflect updated office locations and internal organization and correct nomenclature or punctuation.[16] In light of the above, prior notice and opportunity for comment is unnecessary. However, Commerce would like to know the public's view on these revisions and is therefore soliciting comments on the Interim Final Rule and will consider all comments received before issuing a final rule.

In addition, the APA (5 U.S.C. 553(d)(3)) provides that a 30-day delayed effective date may be waived if the agency finds good cause to waive such a requirement. For the same reasons as explained above, and because this rule does not impose affirmative requirements on any entity, a delayed effective date is unnecessary.

Executive Order 12866

OMB has not found this rule to be a significant rulemaking under Executive Order 12866.

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Paperwork Reduction Act

This rule does not contain a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 (PRA).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes whether a rule will have a significant effect on a substantial number of small entities when the agency is required to publish a general notice of proposed rulemaking. Because a notice of proposed rulemaking is not necessary for this rule, Commerce is not required to prepare a regulatory flexibility analysis for this rule, and none has been prepared.

List of Subjects in 19 CFR Part 356

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Countervailing duties, Imports.

Dated: November 29, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce is amending 19 CFR part 356 as follows:

PART 356—PROCEDURES AND RULES FOR ARTICLE 10.12 OF THE UNITED STATES-MEXICO-CANADA AGREEMENT

■ 1. The authority citation for 19 CFR part 356 continues to read as follows:

Authority: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

■ 2. Revise the heading to part 356 to read as set forth above.

■ 3. Revise § 356.1 to read as follows:

§ 356.1 Scope.

This part sets forth procedures and rules for Article 10.12 of the United States-Mexico-Canada Agreement under the Tariff Act of 1930, as amended by title IV of the United States-Mexico-Canada Agreement Implementation Act of 2020 (19 U.S.C. 1516a and 1677f(f)). This part is authorized by section 412(g) of the United States-Mexico-Canada Agreement Implementation Act of 2020.

■ 4. In § 356.2, revise paragraphs (d), (f), (h), (n), (o), (p), (q), (r), (u), (w), (bb)(2)(ii), (cc)(3), (ee), (ff), (hh), and (kk) to read as follows:

§ 356.2 Definitions.

* * * * *

(d) *Agreement* means the United States-Mexico-Canada Agreement (USMCA) between Canada, the United Mexican States, and the United States, signed on November 30, 2018, as amended;

* * * * *

(f) *Article 10.12 Binational Panel Rules* means the USMCA Article 10.12 Binational Panel Rules, established in accordance with Article 10.12.14 of the USMCA, and any subsequent amendments;

* * * * *

(h) *Binational panel* means a binational panel established pursuant to Annex 10–B.1 to Chapter Ten of the Agreement for the purposes of reviewing a final determination;

* * * * *

(n) *Director* means the Senior APO Specialist (as defined by 19 CFR 354.2) or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

(o) *Disclosure undertaking* means:

(1) In the case of Canada, the Canadian mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 10.12 of the Agreement, as prescribed by subsection 77.21(2) of the Special Import Measures Act, as amended;

(2) In the case of Mexico, the Mexican mechanism for protecting proprietary or privileged information during the proceedings pursuant to Article 10.12 of the Agreement, as prescribed by the Ley de Comercio Exterior and its regulations;

(p) *Extraordinary challenge committee* means the committee established pursuant to Annex 10–B.3 to Chapter Ten of the Agreement to review decisions of a panel or conduct of a panelist;

(q) *Final determination* means ''final determination'' as defined by Article 10.8 of the Agreement;

(r) *Free trade area country* or *FTA country* means ''free trade area country'' as defined by section 516A(f)(9) of the Act (19 U.S.C. 1516a(f)(9));

* * * * *

(u) *Letter of transmittal* means a document marked according to the requirements of 19 CFR 351.303(d)(2);

* * * * *

(w) *Panel review* means review of a final determination pursuant to Chapter Ten of the Agreement;

* * * * *

(bb) * * *

(2) * * *

(ii) Internal communications between officials of Secretariat of Economy in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination; and

* * * * *

[13] *See* changes described above under ''Updates to Address Outdated Notice, Filing, Service, and Protective Order Procedures.''

[14] *See* discussion of changes to §§ 356.2(ee); 356.7; 356.8; 356.10; 356.11; 356.12; 356.14; and 356.18.

[15] *See* discussion of changes to § 356.6 and corresponding revisions to § 356.7.

[16] *See* changes described under ''Other Minor Corrections and Updates.''

(cc) * * *

(3) With respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the Act (19 U.S.C. 1677f(f)) and information the disclosure of which the Department has decided is limited under the procedures adopted pursuant to Article 10.12.14 of the Agreement, including business or trade secrets; production costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

* * * * *

(ee) *Scope determination* or *class or kind of merchandise determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act (19 U.S.C. 1516a(a)(2)(B)(vi)), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering free trade area country merchandise.

(ff) *Secretariat* means the Secretariat established pursuant to Article 30.6 of the Agreement and includes the Secretariat sections located in Canada, Mexico, and the United States;

* * * * *

(hh) *Service address* means the address of the counsel of record for a person, including an electronic mail address submitted with that address, or, where a person is not represented by counsel, the address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, including an electronic mail address submitted with that address, or where a Change of Service Address has been filed by a person, the new service address set out as the service address in that form, including an electronic mail address submitted with that address;

* * * * *

(kk) *United States section of the Secretariat* means, for the purposes of filing, United States Secretary, USMCA Secretariat, room 2061, U.S. Department of Commerce 14th and Constitution Avenue NW, Washington, DC 20230.

■ 5. In § 356.3, revise the introductory text to read as follows:

§ 356.3 Notice of intent to commence judicial review.

A party to a proceeding who intends to commence judicial review of a final determination made in the United States shall file a Notice of Intent to Commence Judicial Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Article 10.12 Binational Panel Rules, within 20 days after:

* * * * *

■ 6. In § 356.4, revise the introductory text to read as follows:

§ 356.4 Request for panel review.

A party to a proceeding who seeks panel review of a final determination shall file a Request for Panel Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Article 10.12 Binational Panel Rules, within 30 days after:

* * * * *

■ 7. Revise § 356.6 to read as follows:

§ 356.6 Receipt of notice of a class or kind of merchandise determination by the Government of a FTA country.

Where the Department has made a class or kind of merchandise determination, notice of such determination shall be deemed received by the Government of a FTA country:

(a) On the date of publication in the official publication of the determination; or

(b) If the determination was not published in the official publication, on the date on which the Department conveys a copy of the determination to the electronic mail address provided by the Embassy of the FTA country during its normal business hours.

■ 8. In § 356.7, revise paragraphs (a), (b), and (c) to read as follows:

§ 356.7 Request to determine when the Government of a FTA country received notice of a class or kind of merchandise determination.

(a) Pursuant to section 516A(g)(1) of the Act (19 U.S.C 1516a(g)(10)), any party to the proceeding may request in writing from the Department the date on which the Government of a FTA country received notice of a class or kind of merchandise determination made by the Department.

(b) A request shall be made by filing a request in accordance with the requirements set forth in 19 CFR 351.303(b) and 351.303(d)(2) with the Secretary of Commerce, Attention: Enforcement and Compliance, APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. A letter of transmittal must be the first page of the request.

(c) The requesting party shall serve a copy of the Request to Determine When the Government of [insert name of applicable FTA country] Received Notice of a Class or Kind of Merchandise Determination on any interested party on the Department's service list in accordance with the service requirements listed in 19 CFR 351.303(f).

* * * * *

■ 9. In § 356.8, revise paragraphs (d)(1) and (2) to read as follows:

§ 356.8 Continued suspension of liquidation.

* * * * *

(d) * * *

(1) A request for Continued Suspension of Liquidation must be filed with the Assistant Secretary for Enforcement and Compliance, Attention: APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, in accordance with the requirements set forth in 19 CFR 351.303(b) and (d)(2). A letter of transmittal must be the first page of the request and be marked: Panel Review—Request for Continued Suspension of Liquidation. The request may be made no earlier than the date on which the first request for binational panel review is filed.

(2) The requesting party shall serve a copy of the Request for Continued Suspension of Liquidation on the United States Secretary and all parties to the proceeding in accordance with the requirements of 19 CFR 351.303(f).

* * * * *

■ 10. In § 356.10:

■ a. Revise paragraphs (b)(1)(i), (b)(1)(ii)(B) and (C), (b)(3), (b)(4)(i), and (b)(4)(ii)(B) and (C);

■ b. Add paragraph (b)(4)(ii)(D);

■ c. Revise paragraphs (b)(4)(iii), (b)(5), and (c)(1)(i);

■ d. Remove and reserve paragraph (c)(1)(ii); and

■ e. Revise paragraphs (c)(2)(i) and (v), (c)(3), (c)(4)(i), and (d)(2).

The revisions and addition read as follows:

§ 356.10 Procedures for obtaining access to proprietary information.

* * * * *

(b) * * *

(1) * * *

(i) The Department has adopted application forms for disclosure of

proprietary information which are available from the United States section of the Secretariat or the Central Records Unit, Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. The application forms may be amended from time to time.

(ii) * * *

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 10.12 of the Agreement;

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, destroy and certify to the Department the destruction of all documents released under the protective order and all other documents containing the proprietary information (such as briefs, notes, or charts based on any such information received under the protective order); and

* * * * *

(3) *Filing of applications.* A person described in § 356.9(a), (b), (d), (e), (f), or (g) shall file the completed application with the United States section of the Secretariat which, in turn, shall provide the application to the Department. A letter of transmittal and proposed protective order must be included with the application.

(4) * * *

(i) *Persons described in §§ 356.9(b) (counsel, etc.).* A person described in § 356.9(b) who files an application before the expiration of the time period fixed under the Article 10.12 Binational Panel Rules for filing a Notice of Appearance in the panel review shall serve the application on each person listed on the service list in accordance with paragraphs (b)(4)(ii) and (iii) of this section. In any other case, such person shall serve the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii).

(ii) * * *

(B) Sending a copy of the document to the service address of the participant by electronic means or by expedited delivery courier or expedited mail service;

(C) Personal service on the participant; or

(D) Filing the document using the United States section of the Secretariat's electronic filing platform.

(iii) *Proof and date of service.* A proof of service shall appear on, or be affixed to, the document. Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier service or expedited mail service. If a document is served by electronic means, the date of service shall be the day on which the document is sent by the sender. If a document is filed using the United States section of the Secretariat's electronic filing platform, the date of service shall be the date of filing.

(5) *Release to employees of panelists, committee members, and counsel or professionals.* A person described in § 356.9(c), including a paralegal, law clerk, or secretary, may be permitted access to proprietary information disclosed under protective order by the counsel, professional, panelist, or extraordinary challenge committee member who retains or employs such person, if such person has agreed to the terms of the protective order issued to the counsel, professional, panelist, or extraordinary challenge committee member, by signing and dating a completed application for protective order of the representative counsel, professional, panelist or extraordinary challenge committee member in the location indicated in that application.

* * * * *

(c) * * *

(1) * * *

(i) Upon receipt by the Department of an application from a person described in § 356.9(a), the Department will issue a protective order authorizing disclosure of proprietary information included in the administrative record of the final determination that is the subject of the panel review at issue. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

* * * * *

(2) * * *

(i) *Opportunity to object to disclosure.* The Department will not rule on an application filed by a person described in § 356.9(b) until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously. Unless the Department has indicated otherwise, any person may file an objection to the application within seven days of filing of the application. Any such objection shall state the specific reasons in the view of such person why the application should not be granted. The objection shall be served on the applicant and on all persons who were served with the application. Service shall be made in accordance with paragraphs (b)(4)(ii) and (iii) of this section. Any reply to an objection will be considered if it is filed before the Department renders a decision.

* * * * *

(v) *Issuance of protective orders.* If the Department issues a protective order to a person described in § 356.9(b), that person shall immediately file the protective order with the United States section of the Secretariat and shall serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(3) *Persons described in § 356.9(d) or (g) (Secretaries, etc., or court reporters, etc.).* Upon receipt by the Department of an application from a person described in § 356.9(d) or (g), the Department will issue a protective order authorizing disclosure of proprietary information to the applicant. The Department shall transmit the protective order to the United States section of the Secretariat.

(4) * * *

(i) Upon receipt by the Department of an application from a person described in § 356.9(e) or (f), the Department will issue a protective order authorizing disclosure of proprietary information included in the record of the panel review at issue. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(d) * * *

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a protective order pursuant to this paragraph (d), the Department shall transmit the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the document to the person to whom the protective order was issued and serve the document on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

■ 11. In § 356.11:

■ a. Revise paragraphs (a)(1)(i), (a)(2) and (3), (a)(5) and (6), (b)(1), (b)(2)(ii) and (iii), and (c)(1)(i);

■ b. Remove and reserve paragraph (c)(1)(ii); and

■ c. Revise paragraphs (c)(2) and (3) and (d)(2).

The revisions read as follows:

§ 356.11 Procedures for obtaining access to privileged information.

(a) * * *

(1) * * *

(i) If a panel decides that *in camera* examination of a document containing privileged information in an administrative record is necessary in order for the panel to determine whether the document, or portions thereof, should be disclosed under a Protective Order for Privileged Information, each panelist who is to conduct the *in camera* review, pursuant to the rules of procedure adopted by the United States and the free trade area countries to implement Article 10.12 of the Agreement, shall submit an application for disclosure of the privileged information under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department; and

* * * * *

(2) *Designated officials of the United States Government.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States should request an extraordinary challenge committee, each official of the United States Government (other than an officer or employee of the investigating authority that issued the final determination subject to review) whom the United States Trade Representative informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the application to the Department.

(3) *Designated officials of the government of a FTA country.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the Government of an involved FTA country should request an extraordinary challenge committee, each official of the Government of the involved FTA country whom an authorized agency of the involved FTA country informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the application to the Department.

* * * * *

(5) *Counsel or a professional under the direction or control of counsel.* If the panel decides, in accordance with the Article 10.12 Binational Panel Rules, that disclosure of a document containing privileged information is appropriate, a counsel or a professional under the direction or control of counsel identified in such a decision as entitled to release of information under a Protective Order for Privileged Information shall submit an application for a Protective Order for Privileged Information. Any such person shall:

(i) File the application with the United States section of the Secretariat which, in turn, shall submit the application to the Department; and

(ii) As soon as the deadline fixed under the Article 10.12 Binational Panel Rules for filing a Notice of Appearance in the panel review has passed, shall serve the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(6) *Other designated persons.* If the panel decides, in accordance with the Article 10.12 Binational Panel Rules, that disclosure of a document containing privileged information is appropriate, any person identified in such a decision as entitled to release of information under a Protective Order for Privileged Information, *e.g.,* a Secretary, Secretariat staff, court reporters, interpreters and translators, or a member of the staff of a panelist or extraordinary challenge committee member, shall submit an application for release under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(b) * * *

(1) The Department has adopted application forms for disclosure of privileged information which are available from the United States section of the Secretariat and the Central Records Unit, Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. These forms may be amended from time to time.

(2) * * *

(ii) Use such information solely for purposes of the proceedings under Article 10.12 of the Agreement;

(iii) Upon completion of the panel review, or at such earlier date as may be determined by the Department, destroy and certify to the Department the destruction of all documents released under the Protective Order for Privileged Information and all other documents containing the privileged information (such as briefs, notes, or charts based on any such information received under the Protective Order for Privileged Information); and

* * * * *

(c) * * *

(1) * * *

(i) Upon receipt of an application for protective order under this section from a panelist, designated government official or member of an extraordinary challenge committee, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4)(ii) and (iii).

* * * * *

(2) *Counsel or a professional under the direction or control of counsel.* Upon receipt of an application for protective order under this section from a counsel or a professional under the direction or control of counsel, the Department shall issue a Protective Order for Privileged Information. If the Department issues a protective order to such person, that person shall immediately file the protective order with the United States section of the Secretariat and shall serve the order on each participant, other than the investigating authority, in accordance with § 356.10(b)(4)(ii) and (iii).

(3) *Other designated persons described in paragraph (a)(6) of this section.* Upon receipt of an application for protective order under this section from a designated person described in paragraph (a)(6) of this section, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the protective order to the United States section of the Secretariat.

(d) * * *

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a Protective Order for Privileged Information pursuant to this paragraph (d), the Department shall transmit the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the document to the person to whom the protective order was issued and serve the document on each participant, other than the investigating authority, in accordance with § 356.10(b)(4)(ii) and (iii).

■ 12. In § 356.12, revise paragraph (a)(5) to read as follows:

§ 356.12 Sanctions for violation of a protective order or disclosure undertaking.

(a) * * *

(5) Required to destroy and certify to the Department the destruction of all material previously provided by the investigating authority, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or a disclosure undertaking.

* * * * *

■ 13. In § 356.14, revise paragraphs (d)(2) and (4) to read as follows:

§ 356.14 Report of violation and investigation.

* * * * *

(d) * * *

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

* * * * *

(4) Failure to destroy and certify to the Department the destruction of all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the protective order.

* * * * *

■ 14. In § 356.18, revise paragraph (c)(4) to read as follows:

§ 356.18 Interim sanctions.

* * * * *

(c) * * *

(4) Requiring the person to destroy and certify to the Department the destruction of all material previously provided by the Department or the investigating authority of the involved FTA country, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

* * * * *

■ 15. In § 356.27, revise the paragraph (d) subject heading to read as follows:

§ 356.27 Final decision.

* * * * *

(d) *Contents of final decision.* * * *

* * * * *

[FR Doc. 2021–26551 Filed 12–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1141

[Docket No. FDA–2019–N–3065]

RIN 0910–AI39

Tobacco Products; Required Warnings for Cigarette Packages and Advertisements; Delayed Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: As required by an order issued by the U.S. District Court for the Eastern District of Texas, this action delays the effective date of the final rule (''Tobacco Products; Required Warnings for Cigarette Packages and Advertisements''), which published on March 18, 2020. The new effective date is January 9, 2023.

DATES: The effective date of the rule amending 21 CFR part 1141 published at 85 FR 15638, March 18, 2020, and delayed at 85 FR 32293, May 29, 2020; 86 FR 3793, January 15, 2021; 86 FR 36509, July 12, 2021; and 86 FR 50854, September 13, 2021, is further delayed until January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1371, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 18, 2020, the Food and Drug Administration (FDA or Agency) issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements. The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning label statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act of 1965 (Pub. L. 89–92) to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics. Pursuant to section 201(b) of the Tobacco Control Act, the rule was published with an effective date of June 18, 2021, 15 months after the date of publication of the final rule.

On April 3, 2020, the final rule was challenged in the U.S. District Court for the Eastern District of Texas.[1] On May 8, 2020, the court granted a joint motion to govern proceedings in that case and postpone the effective date of the final rule by 120 days.[2] On December 2, 2020, the court granted a new motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[3] On March 2, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[4] On May 21, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[5] On August 18, 2021, the court issued an order to postpone the effective date of the final rule by an additional 90 days.[6] On November 12, 2021, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[7] The court ordered that the new effective date of the final rule is January 9, 2023. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, the Agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exception in 5 U.S.C.

[1] *R.J. Reynolds Tobacco Co. et al.* v. *United States Food and Drug Administration et al.,* No. 6:20–cv–00176 (E.D. Tex. filed April 3, 2020).

[2] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 8, 2020) (order granting joint motion and establishing schedule), Doc. No. 33.

[3] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. December 2, 2020) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 80.

[4] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. March 2, 2021) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 89.

[5] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 21, 2021) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 91.

[6] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. August 18, 2021) (order postponing effective date), Doc. No. 92.

[7] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. November 12, 2021) (order postponing effective date), Doc. No. 93.

553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The 90-day postponement of the effective date, until January 9, 2023, is required by court order in accordance with the court's authority to postpone a rule's effective date pending judicial review (5 U.S.C. 705). Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issuance and implementation of regulations.

Dated: December 3, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26643 Filed 12–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 11601]

RIN 1400–AF47

International Traffic in Arms Regulations: Addition of Cambodia to List of Proscribed Countries

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to add Cambodia in the list of countries for which it is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services. This change reflects that it is the policy of the United States to deny all licenses and other approvals to export and import defense articles and defense services destined for or originating in Cambodia, except as otherwise provided herein.

DATES: The rule is effective on December 9, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Engda Wubneh, Foreign Affairs Officer, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–1809, or email *DDTCCustomerService@state.gov.* ATTN: Regulatory Change, ITAR Section 126.1 Cambodia.

SUPPLEMENTARY INFORMATION: On June 1, 2021, the Department expressed serious concerns about the People's Republic of China's (PRC's) military presence and other activities in Cambodia and emphasized that a PRC military base in Cambodia would undermine Cambodian sovereignty, threaten regional security, and negatively impact U.S.-Cambodia relations. Senior officials at the Departments of State and Defense continue to voice these concerns but Cambodia continues to allow the PRC to expand its military presence and construct exclusive-use facilities on the Gulf of Thailand.

In response to significant credible evidence of corruption, human rights abuses, and an exclusive agreement with the People's Republic of China (PRC) on military expansion in Cambodia by the Cambodian government, effective immediately, the Department is amending ITAR § 126.1 by adding Cambodia in paragraph (o) and revising the country policy chart in paragraph (d)(2). The policy of denial applies to licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Cambodia, with exceptions related to conventional weapons destruction and humanitarian demining activities. This action also precludes the use of exemptions from licensing or other approval requirements as described in that section.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a military or foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA), pursuant to 5 U.S.C. 553(a)(1). Since this rule is exempt from 5 U.S.C 553, the provisions of section 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment provisions of 5 U.S.C. 553(b), there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department has determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Because the scope of this rule does not impose additional regulatory requirements or obligations, the Department believes costs associated with this rule will be minimal. This rule has not been designated a ''significant regulatory action'' by the Office and Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

For the reasons set forth above, title 22, chapter I, subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2780, 2791, and 2797; 22 U.S.C. 2651a; 22 U.S.C. 287c; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 2. Section 126.1 is amended by revising the table in paragraph (d)(2) and adding paragraph (o) to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(d) * * *

(2) * * *

TABLE 2 TO PARAGRAPH (d)(2)

Country	Country specific paragraph location
Afghanistan	See also paragraph (g) of this section.
Cambodia	See also paragraph (o) of this section.
Central African Republic	See also paragraph (u) of this section.
Cyprus	See also paragraph (r) of this section.
Democratic Republic of Congo	See also paragraph (i) of this section.
Ethiopia	See also paragraph (n) of this section.
Eritrea	See also paragraph (h) of this section.
Haiti	See also paragraph (j) of this section.
Iraq	See also paragraph (f) of this section.
Lebanon	See also paragraph (t) of this section.
Libya	See also paragraph (k) of this section.
Russia	See also paragraph (l) of this section.
Somalia	See also paragraph (m) of this section.
South Sudan	See also paragraph (w) of this section.
Sudan	See also paragraph (v) of this section.
Zimbabwe	See also paragraph (s) of this section.

* * * * *

(o) *Cambodia.* It is the policy of the United States to deny licenses or other approvals for exports and imports of defense articles and defense services destined for or originating in Cambodia, except that a license or other approval may be issued, on a case-by-case basis, for defense articles and defense services in furtherance of conventional weapons destruction or humanitarian mine action activities.

* * * * *

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2021–26590 Filed 12–8–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210210–0018; RTID 0648–XB240]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Hook-and-Line Catcher/Processors in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by hook-and-line catcher/processors in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2021 Pacific cod total allowable catch apportioned to hook-and-line catcher/processors in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), December 6, 2021, through 2400 hours, A.l.t., December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Allyson Olds, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2021 Pacific cod total allowable catch (TAC) apportioned to hook-and-line catcher/processors in the Western Regulatory Area of the GOA is 1,068 metric tons (mt), as established by the final 2021 and 2022 harvest specifications for groundfish of the GOA (86 FR 10184, February 19, 2021).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2021 Pacific cod TAC apportioned to hook-and-line catcher/processors in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,058 mt and is setting aside the remaining 10 mt as

bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by hook-and-line catcher/processors in the Western Regulatory Area of the GOA. While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by hook-and-line catcher/processors in the Western Regulatory Area of the GOA. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of December 3, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: December 6, 2021.

Ngagne Jafnar Gueye,

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

[FR Doc. 2021–26673 Filed 12–6–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 234
Thursday, December 9, 2021

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2021–0161]

RIN 3150–AK69

List of Approved Spent Fuel Storage Casks: TN Americas LLC, TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, Renewal of Initial Certificate and Amendment No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage regulations by revising the TN Americas LLC, TN–68 Dry Storage Cask System listing within the ''List of approved spent fuel storage casks'' to renew, for an additional 40 years, the initial certificate and Amendment No. 1 of Certificate of Compliance No. 1027. The renewal of the initial certificate and Amendment No. 1 revises the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components of the dry storage system to ensure that the structures, systems, and components will maintain their intended functions during the period of extended storage operations.

DATES: Submit comments by January 10, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2021–0161, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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: Christian Jacobs, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6825, email: *Christian.Jacobs@nrc.gov* and Solomon Sahle, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3781, email: *Solomon.Sahle@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0161 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–2021–0161. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407, email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2021–0161 in your comment submission. The NRC requests that you submit comments through the Federal rulemaking website at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on February 22, 2022. However, if the NRC receives any significant adverse comment by January 10, 2022, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC

will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on April 28, 2000 (65 FR 24855), that approved the TN Americas LLC, TN–68 Dry Storage Cask System design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance No. 1027.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS Accession No.
TN Americas LLC Renewal Application for the TN–68 Dry Storage Cask Certificate of Compliance No. 1027, dated April 9, 2020	ML20100F295.
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, dated July 29, 2020.	ML20211L707.
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, dated February 9, 2021.	ML21040A406.
Supplemental Response to Request for Additional Information for the TN Americas LLC Application for Renewal of the TN–68 Dry Storage Cask, Certificate of Compliance No. 1027, dated March 24, 2021.	ML21083A029.
User Need Memorandum for Rulemaking for Certificate of Compliance Renewal, Initial Issue (Amendment Number 0), Amendment Number 1 to TN–68 Dry Storage Cask, dated September 20, 2021.	ML21174A125.
Preliminary Safety Evaluation Report for the TN–32 Dry Storage Cask Certificate of Compliance Renewal	ML21174A128.
Proposed Certificate of Compliance No. 1027, Renewed Initial Certificate	ML21174A126.
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1027, Renewed Initial Certificate	ML21174A129.
Proposed Certificate of Compliance No. 1027, Renewed Amendment No. 1	ML21174A127.
Proposed Technical Specifications, Appendix A, Certificate of Compliance No. 1027, Renewed Amendment No. 1	ML21174A131.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2021–0161.

Dated: November 29, 2021.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2021–26627 Filed 12–8–21; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0825; Airspace Docket No. 21–ASW–19]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Palestine, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Palestine Municipal Airport, Palestine, TX. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Palestine non-directional beacon (NDB), the VHF omnidirectional range (VOR) and distance measuring equipment (DME), and associated

extension is no longer required and will be removed in the airspace description. The geographical coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0825/Airspace Docket No. 21–ASW–19, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Palestine Municipal Airport, Palestine, TX, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0825/Airspace Docket No. 21–ASW–19.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface within 8.2 mile (increased from 7.1-mile) radius of Palestine Municipal Airport, Palestine, TX, by removing the Franklin VOR/DME and associated extension from the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Palestine NDB, which provided navigation information for the instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ASW TX E5 Palestine, TX [Amended]

Palestine Municipal Airport, TX
(Lat. 31°46′47″ N, long. 95°42′23″ W)

That airspace extending upward from 700 feet above the surface within a 8.2-mile radius of Palestine Municipal Airport.

Issued in Fort Worth, Texas, on December 2, 2021.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–26570 Filed 12–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1102; Airspace Docket No. 21–ASW–24]

RIN 2120–AA66

Proposed Amendment of the Class E Airspace; Corsicana, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Corsicana, TX. The FAA is proposing this action as the result of an airspace review due to the decommissioning of the Powell non-directional beacon (NDB). The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–1102/Airspace Docket No. 21–ASW–24, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at C. David Campbell Field-Corsicana Municipal Airport, Corsicana, TX, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–1102/Airspace Docket No. 21–ASW–24.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 6.6-mile (increased from a 6.5-mile) radius of C. David Campbell Field–Corsicana Municipal Airport, Corsicana, TX; removing the Powell NDB and associated extensions from the airspace legal description; removing the city associated with the airport in the header of the airspace legal description to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review due to the decommissioning of the Powell NDB which provided guidance to instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ASW TX E5 Corsicana, TX [Amended]

C. David Campbell Field–Corsicana Municipal Airport, TX
(Lat. 32°01′41″ N, long. 96°24′02″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of C. David Campbell Field–Corsicana Municipal Airport.

Issued in Fort Worth, Texas, on December 6, 2021.

Steven T. Phillips,

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

[FR Doc. 2021–26638 Filed 12–8–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1080; Airspace Docket No. 21–AGL–33]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Dayton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Dayton, OH. The FAA is proposing this action due to new public instrument procedures being established at Moraine Air Park, Dayton, OH.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–1080/Airspace Docket No. 21–AGL–33 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Moraine Air Park, Dayton, OH, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–1080/Airspace Docket No. 21–AGL–33.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface to within a 6.3-mile radius of Moraine Air Park, Dayton, OH.

This action is due to the establishment of new public instrument procedures at Moraine Air Park.

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

AGL OH E5 Dayton, OH [Establish]

Moraine Air Park, OH
(Lat. 39°40′56″ N, long. 84°14′24″ W)

That airspace extending upward from 700 feet above the surface within an 6.3-mile radius of the Moraine Air Park.

Issued in Fort Worth, Texas, on December 6, 2021.

Steven T. Phillips,

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

[FR Doc. 2021–26639 Filed 12–8–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

[File No. R207004]

Petition for Rulemaking of Randall David Marks

AGENCY: Federal Trade Commission.

ACTION: Receipt of petition; request for comment.

SUMMARY: Please take notice that the Federal Trade Commission (''Commission'') received a petition for rulemaking from Randall David Marks, and has published that petition online at *https://www.regulations.gov.* The Commission invites written comments concerning the petition. Publication of this petition is pursuant to the Commission's Rules of Practice and Procedure, and does not affect the legal status of the petition or its final disposition.

DATES: Comments must identify the petition docket number and be filed by January 10, 2022.

ADDRESSES: You may view the petition, identified by docket number FTC–2021–0066, and submit written comments concerning its merits by using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit sensitive or confidential information. You may read background documents or comments received at *https://www.regulations.gov* at any time.

FOR FURTHER INFORMATION CONTACT: Daniel Freer, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC, 20580, *dfreer@ftc.gov,* (202) 326–2663.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18(a)(1)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(1)(B), and FTC Rule 1.31(f), 16 CFR 1.31(f), notice is hereby given that the above-captioned petition has been filed with the Secretary of the Commission and has been placed on the public record for a period of thirty (30) days. Any person may submit comments in support of or in opposition to the petition. All timely and responsive comments submitted in connection with this petition will become part of the public record. The Commission will not consider the petition's merits until after the comment period closes.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 601 note.

April J. Tabor,

Secretary.

[FR Doc. 2021–26611 Filed 12–8–21; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 314

RIN 3084–AB35

Standards for Safeguarding Customer Information

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Supplemental notice of proposed rulemaking; request for public comment.

SUMMARY: The Commission requests public comment on its proposal to further amend the Standards for Safeguarding Customer Information (''Safeguards Rule'' or ''Rule'') to require financial institutions to report to the Commission any security event where the financial institutions have determined misuse of customer information has occurred or is reasonably likely and at least 1,000 consumers have been affected or reasonably may be affected.

DATES: Written comments must be received on or before February 7, 2022.

ADDRESSES: Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Safeguards Rule, 16 CFR part 314, Project No. P145407,'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David Lincicum, Katherine McCarron, or Robin Wetherill, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2773, (202) 326–2333, or (202) 326–2220.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Gramm Leach Bliley Act (''GLBA'') in 1999.[1] The GLBA provides a framework for regulating the privacy and data security practices of a broad range of financial institutions. Among other things, the GLBA requires financial institutions to provide customers with information about the institutions' privacy practices and about their opt-out rights, and to implement security safeguards for customer information.

[1] Public Law 106–102, 113 Stat. 1338 (1999).

Subtitle A of Title V of the GLBA required the Commission and other Federal agencies to establish standards for financial institutions relating to administrative, technical, and physical safeguards for certain information.[2] Pursuant to the Act's directive, the Commission promulgated the Safeguards Rule in 2002. The Safeguards Rule became effective on May 23, 2003.

II. Regulatory Review of the Safeguards Rule

On September 7, 2016, the Commission solicited comments on the Safeguards Rule as part of its periodic review of its rules and guides.[3] The Commission sought comment on a number of general issues, including the economic impact and benefits of the Rule; possible conflicts between the Rule and state, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Commission received 28 comments from individuals and entities representing a wide range of viewpoints.[4] Most commenters agreed there is a continuing need for the Rule and it benefits consumers and competition.[5]

On April 4, 2019, the Commission issued a notice of proposed rulemaking (NPRM) setting forth proposed amendments to the Safeguards Rule.[6] In response, the Commission received 49 comments from various interested parties including industry groups, consumer groups, and individual consumers.[7] On July 13, 2020, the Commission held a workshop concerning the proposed changes and conducted panels with information security experts discussing subjects related to the proposed amendments.[8] The Commission received 11 comments following the workshop. After reviewing the initial comments to the NPRM, conducting the workshop, and then reviewing the comments received following the workshop, the Commission issued final amendments to the Safeguards Rule on October 8, 2021, which are published elsewhere in this issue of the **Federal Register**.

III. Proposal for Requirement that Financial Institutions Report Security Events to the Commission

In the NPRM, the Commission explained its proposed amendments to the Safeguards Rule were based primarily on the cybersecurity regulations issued by the New York Department of Financial Services, 23 NYCRR 500 (''Cybersecurity Regulations'').[9] The Commission also noted the Cybersecurity Regulations require covered entities to report security events to the superintendent of the Department of Financial Services.[10] Relatedly, Federal agencies enforcing the GLBA have required financial institutions to provide notice to the regulator, and in some instances notice to consumers as well, for many years.[11] Although the Commission did not include a similar reporting requirement in the NPRM, it did seek comment on whether the Safeguards Rule should be amended to require that financial institutions report security events to the Commission. Specifically, the Commission requested comments on whether such a requirement should be added and, if so, (1) the appropriate deadline for reporting security events after discovery; (2) whether all security events should require notification or whether notification should be required only under certain circumstances, such as a determination of a likelihood of harm to customers or that the event affects a certain number of customers; (3) whether such reports should be made public; (4) whether events involving encrypted information should be included in the requirement; and (5) whether the requirement should allow law enforcement agencies to prevent or delay notification if notification would affect law-enforcement investigations.[12]

Several commenters supported adding a reporting requirement.[13] For example, the Princeton University Center for Information Technology Policy (''PUCITP'') noted such a reporting requirement would ''provide the Commission with valuable information about the scope of the problem and the effectiveness of security measures across different entities'' and it would ''also help the Commission coordinate responses to shared threats.'' [14] PUCITP also recommended all security events that affect a certain number of customers should be reported without regard to the likelihood of harm and such reports should be made public.[15] The National Association of Federally-Insured Credit Unions (''NAFCU'') argued requiring financial institutions to report security events to the Commission would provide an ''appropriate incentive for covered financial companies to disclose information to consumers and relevant regulatory bodies.'' [16] NAFCU also suggested notification requirements are important because they ''ensure independent assessment of whether a security incident represents a threat to consumer privacy.'' [17]

Two commenters opposed the inclusion of a reporting requirement.[18] The American Council on Education (''ACE'') argued such a requirement ''would simply add another layer on top of an already crowded list of federal and state law enforcement contacts and state

[2] *See* 15 U.S.C. 6801(b), 6805(b)(2).

[3] Safeguards Rule, Request for Comment, 81 FR 61632 (Sept. 7, 2016).

[4] The 28 public comments received prior to March 15, 2019, are posted at: *https://www.ftc.gov/policy/public-comments/initiative-674.*

[5] *See, e.g.,* Mortgage Bankers Association, (comment 39); National Automobile Dealers Association, (comment 40; Data & Marketing Association, (comment 38); Electronic Transactions Association, (comment 24; State Privacy & Security Coalition, (comment 26).

[6] FTC Notice of Proposed Rulemaking (''NPRM''), 84 FR 13158 (April 4, 2019).

[7] The 49 relevant public comments received on or after March 15, 2019, can be found at *Regulations.gov. See* FTC Seeks Comment on Proposed Amendments to Safeguards and Privacy Rules, 16 CFR part 314, Project No. P145407, *https://www.regulations.gov/docketBrowser?rpp=25&so=ASC&sb=docId&po=25&dct=PS&D=FTC-2019-0019&refD=FTC-2019-0019-0011.* The 11 relevant public comments relating to the subject matter of the July 13, 2020, workshop can be found at: *https://www.regulations.gov/docketBrowser?rpp=25&so=ASC&sb=docId&po=0&dct=PS&D=FTC-2020-0038.* This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number based on the last two digits of the comment ID number.

[8] *See* FTC, Information Security and Financial Institutions: FTC Workshop to Examine Safeguards Rule Tr. (July 13, 2020), *https://www.ftc.gov/system/files/documents/public_events/1567141/transcript-glb-safeguards-workshop-full.pdf.*

[9] NPRM, 84 FR at 13163.

[10] *Id.* at 13169.

[11] See Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice (originally issued by the Office of the Comptroller of the Currency; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the Office of Thrift Supervision), 70 FR 15736, 15752 (Mar. 29, 2005), *https://www.occ.treas.gov/news-issuances/federal-register/2005/70fr15736.pdf* (''At a minimum, an institution's response program should contain procedures for the following: . . . Notifying its primary Federal regulator as soon as possible when the institution becomes aware of an incident involving unauthorized access to or use of *sensitive* customer information, as defined below; [and notifying] customers when warranted'').

[12] *Id.*

[13] Consumer Reports, (comment 52), at 6; Princeton University Center for Information Technology Policy, (comment 54), at 7; Credit Union National Association, (comment 30), at 2; Heartland Credit Union Association, (comment 42), at 2; National Association of Federally-Insured Credit Unions, (comment 43), at 1–2.

[14] Princeton University Center for Information Technology Policy, (comment 54), at 7.

[15] *Id.*

[16] National Association of Federally-Insured Credit Unions, (comment 43), at 1.

[17] *Id.* at 1–2.

[18] National Independent Automobile Dealers Association, (comment 48), at 7; American Council on Education, (comment 24), at 15.

breach reporting requirements.'' [19] ACE also suggested any notification requirement should be limited to a more restricted definition of ''security event'' than the definition in the proposed Rule, so financial institutions would only be required to report incidents that could lead to consumer harm.[20] The National Independent Automobile Dealers Association noted it ''objects to any proposed amendment that would require a financial institution to report security events to the FTC.'' [21]

After reviewing the comments, the Commission proposes amending the Safeguards Rule to require financial institutions to report to the Commission certain security events as soon as possible, and no later than 30 days after discovery of the event. Such reports would ensure the Commission is aware of security events that could suggest a financial institution's security program does not comply with the Rule's requirements, thus facilitating Commission enforcement of the Rule. While many states already require notice of certain breaches, the state law requirements vary as to whether notice to the state regulator is required and as to whether such breach notifications are made public. To the extent state law already requires notification to consumers or state regulators, moreover, there is little additional burden in providing notice to the Commission as well. In order to address concerns expressed by commenters that a reporting requirement would add additional burden to financial institutions, the Commission proposes limiting the reporting requirement to only those security events where the financial institutions determine misuse of customer information has occurred or is reasonably likely, and where at least 1,000 consumers have been affected or reasonably may be affected.[22] The notice to the Commission would involve a limited set of information, as typically required under existing breach notification requirements.[23] Financial institutions would be required to promptly provide the Commission: (1) The name and contact information of the reporting financial institution; (2) a description of the types of information involved in the security event; (3) if the information is possible to determine, the date or date range of the security event; and (4) a general description of the security event. To further reduce costs, the Commission proposes the notice be provided electronically through a form located on the FTC's website, *https://www.ftc.gov.*

The Commission will input the information it receives from affected financial institutions into a database that it will update periodically and make available to the public. The FTC does not believe the information to be provided to the Commission under the proposed reporting requirement will include confidential or proprietary information and, as a result, does not anticipate providing a mechanism for financial institutions to request confidential treatment of the information.

The Commission invites comments on its proposed amendment requiring financial institutions to report certain security events to the Commission. Specifically, commenters may wish to address the following:

(1) The information to be contained in any notice to the Commission. Is the proposed list of elements sufficient? Should there be additional information? Less?

(2) Whether the Commission's proposed threshold for requiring notice—for those security events for which misuse of the information of 1,000 or more consumers has occurred or is reasonably likely to occur—is the appropriate one. What about security events in which misuse is possible, but not likely? Should there be a carve-out for security events solely involving encrypted data?

(3) The timing for notification to be given to the Commission. Is the current proposal of a maximum of 30 days after discovery of the security event reasonable? Is a shorter period practicable?

(4) Whether the requirement should allow law enforcement agencies to prevent or delay notification if notification to the Commission would affect law-enforcement investigations. The proposed rule does not include such a requirement. Comments are also welcome on whether such a law enforcement right to prevent or delay notification is only necessary to the extent notices are made public.

(5) Whether the information reported to the Commission should be made public. Should the Commission permit affected financial institutions to request confidential treatment of the required information? If so, under what circumstances? Should affected financial institutions be allowed to request delaying the public publication of the security event information and, if so, on what basis?

(6) Whether, instead of implementing a stand-alone reporting requirement, the Commission should only require notification to the Commission whenever a financial institution is required to provide notice of a security event or similar to a governmental entity under another state or Federal statute, rule, or regulation. How would such a provision affect the Commission's ability to enforce the Rule? Would such an approach affect the burden on financial institutions? Would such an approach generate consistent reporting due to differences in applicable laws?

(7) Whether a notification requirement should be included at all.

(8) Whether notification to consumers, as well as to the Commission, should be required, and if so, under what circumstances.

IV. Section-by-Section Analysis

Proposed Amendments to § 314.4: Elements

The proposed amendment to § 314.4 would add a new paragraph (j). Proposed paragraph (j) would require financial institutions that experience a security event in which the misuse of customer information has occurred or is reasonably likely, and at least 1,000 consumers have been affected or reasonably may be affected, to provide notice of the security event to the Commission. Proposed paragraph (j) would also require that any such notice be made electronically on a form on the FTC's website, *https://www.ftc.gov,* within 30 days from discovery of the security event and include the following information: (1) The name and contact information of the reporting financial institution; (2) a description of the types of information involved in the security event; (3) if the information is possible to determine, the date or date range of the security event; and (4) a general description of the security event.

Proposed Amendments to § 314.5: Effective Date

The proposed amendment to § 314.5 states the proposed reporting requirement would not be effective until six months after the publication of a final rule. The effective date of this element would be delayed to allow financial institutions appropriate time to incorporate such a reporting requirement into their security event response plans. All other requirements under the Safeguards Rule would remain in effect during this six-month

[19] American Council on Education, (comment 24), at 15.

[20] *Id.*

[21] National Independent Automobile Dealers Association, (comment 48), at 7.

[22] *See* Princeton University Center for Information Technology Policy, (comment 54), at 7 (endorsing notification requirement for events that affect at least a certain number of consumers).

[23] *See, e.g.,* 23 CRR–NY 500.17; Cal. Civil Code 1798.82; Tex. Bus. & Com. Code 521.053; Fla. Stat. 501.171.

period. The Commission welcomes comment on this approach.

V. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 7, 2022. Write ''Safeguards Rule, 16 CFR part 314, Project No. P145407'' on the comment. Precautions related to the COVID–19 pandemic, along with the agency's heightened security screening, will cause postal mail addressed to the Commission to be delayed. We strongly encourage you to submit your comments online. To make sure the Commission considers your online comment, you must file it through the *https://www.regulations.gov* website by following the instructions on the web-based form provided. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Safeguards Rule, 16 CFR part 314, Project No. P145407'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential,'' as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2), including in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comments to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before February 7, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record.[24]

VII. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* requires Federal agencies to obtain Office of Management and Budget (''OMB'') approval before undertaking a collection of information directed to ten or more persons. Pursuant to the regulations implementing the PRA (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid OMB control number.

The proposed reporting requirement discussed above constitutes a ''collection of information'' for purposes of the PRA.[25] As required by the PRA, the FTC has submitted this proposed information collection requirement to OMB for its review, and staff has estimated the paperwork burden for this requirement as set forth below.

The proposed reporting requirement will only affect those financial institutions that suffer a security event in which the misuse of customer information has occurred or is reasonably likely and that affects, or reasonably may affect, at least 1,000 consumers. Therefore, FTC staff estimates the proposed reporting requirement will affect approximately 110 financial institutions each year.[26] FTC staff anticipates the burden associated with the proposed reporting requirement will consist of the time necessary to compile the requested information and report it via the electronic form located on the Commission's website. FTC staff estimates this will require approximately five hours for affected financial institutions, for a total annual burden of approximately 550 hours (110 responses × 5 hours).

The Commission does not believe the proposed reporting requirement would impose any new investigative costs on financial institutions. The information about security events requested in the proposed reporting requirement (*i.e.,* a general description of the event, the types of information affected, and the dates of the event) is information the Commission believes financial institutions would acquire in the normal course of responding to a security event. In addition, in many cases, the information requested by the proposed reporting requirement is similar to information entities are required to disclose under various states' data breach notification laws.[27] As a result,

[24] *See* 16 CFR 1.26(b)(5).

[25] 44 U.S.C. 3502(3)(A)(i).

[26] According to the Identity Theft Resource Center, 108 entities in the ''Banking/Credit/Financial'' category suffered data breaches in 2019. *2019 End-of-Year Data Breach Report,* Identity Theft Resource Center, available at: *https://www.idtheftcenter.org/wp-content/uploads/2020/01/01.28.2020_ITRC_2019-End-of-Year-Data-Breach-Report_FINAL_Highres-Appendix.pdf.* Although this number may exclude some entities covered by the Safeguards Rule but not contained in the ''Banking/Credit/Financial'' category, not every security event will trigger the reporting obligations in the proposed requirement. Therefore, the Commission believes 110 to be a reasonable estimate.

[27] *See, e.g.,* Cal. Civil Code 1798.82; Tex. Bus. & Com. Code 521.053; Fla. Stat. 501.171.

FTC staff estimates the additional costs imposed by the proposed reporting requirement will be limited to the administrative costs of compiling the requested information and reporting it to the Commission on an electronic form located on the Commission's website.

FTC staff derives the associated labor cost by calculating the hourly wages necessary to prepare the required reports. Staff anticipates required information will be compiled by information security analysts in the course of assessing and responding to a security event, resulting in 3 hours of labor at a mean hourly wage of $50.10 (3 hours × $50.10 = $150.30).[28] Staff also anticipates affected financial institutions may use attorneys to formulate and submit the required report, resulting in 2 hours of labor at a mean hourly wage of $69.86 (2 hours × $69.86 = $139.72).[29] Accordingly, FTC staff estimates the approximate labor cost to be $290 per report (rounded to the nearest dollar). This yields a total annual cost burden of $31,900 (110 annual responses × $290).

The Commission proposes to provide an online reporting form on the Commission's website to facilitate reporting of qualifying security events. As a result, the Commission does not anticipate covered financial institutions will incur any new capital or non-labor costs in complying with the proposed reporting requirement.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to the Commission. All comments should be filed as prescribed in the **ADDRESSES** section above and must be received on or before February 7, 2022.

[28] This figure is derived from the mean hourly wage for Information security analysts. See ''Occupational Employment and Wages–May 2019,'' Bureau of Labor Statistics, U.S. Department of Labor (March 31, 2020), Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2019''), available at *https://www.bls.gov/news.release/pdf/ocwage.pdf.*

[29] This figure is derived from the mean hourly wage for Lawyers. See ''Occupational Employment and Wages–May 2019,'' Bureau of Labor Statistics, U.S. Department of Labor (March 31, 2020), Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2019''), available at *https://www.bls.gov/news.release/pdf/ocwage.pdf.*

Comments on the proposed information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, comments should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503. Comments can also be sent by email to *MBX.OMB.OIRA.Submission@OMB.eop.gov.*

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.[30] The Commission recognizes some affected entities may qualify as small businesses under the relevant thresholds. However, the Commission does not expect the proposed reporting requirement, if adopted, would have the threshold impact on small entities. The proposed reporting requirement will apply to financial institutions that, in many instances, already have an obligation to disclose similar information under certain state laws.

This document serves as notification to the Small Business Administration of the agency's certification of no effect. Although the Commission certifies under the RFA that these proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined it is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed amendments on small entities. The Commission invites comment on the burden on any small entities that would be covered and has prepared the following analysis:

1. Reasons for the Proposed Rule

The proposed reporting requirement would ensure the Commission is aware of security events that could suggest a financial institution's security program does not comply with the Rule's requirements, thus facilitating Commission enforcement of the Rule. To the extent the reported information is made public, the information will also assist consumers by providing information as to the security of their personal information in the hands of various financial institutions.

[30] 5 U.S.C. 603 *et seq.*

2. Statement of Objectives and Legal Basis

The objectives of the proposed reporting requirement are discussed above. The legal basis for the proposed requirement is Section 501(b) of the GLBA.

3. Description of Small Entities to Which the Rule Will Apply

Determining a precise estimate of the number of small entities [31] is not readily feasible. Financial institutions already covered by the Safeguards Rule include lenders, financial advisors, loan brokers and servicers, collection agencies, financial advisors, tax preparers, and real estate settlement services, to the extent they have ''customer information'' within the meaning of the Rule. However, it is not known how many of these financial institutions are small entities. The Commission requests comment and information on the number of small entities that would be affected by the proposed reporting requirement.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed notification requirement imposes reporting requirements within the meaning of the PRA. The Commission is seeking clearance from OMB for these requirements.

Specifically, as outlined above, the proposed reporting requirement will apply to financial institutions that experience a security event in which the misuse of customer information has occurred or is reasonably likely and affects, or reasonably may affect, at least

[31] The U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes (''NAICS'') are generally expressed in either millions of dollars or number of employees. A size standard is the largest a business can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the annual receipts or the average employment of a firm. Depending on the nature of the financial services an institution provides, the size standard varies. By way of example, mortgage and nonmortgage loan brokers (NAICS code 522310) are classified as small if their annual receipts are $8 million or less. Consumer lending institutions (NAICS code 52291) are classified as small if their annual receipts are $41.5 million or less. Commercial banking and savings institutions (NAICS codes 522110 and 522120) are classified as small if their assets are $600 million or less. Assets are determined by averaging the assets reported on businesses' four quarterly financial statements for the preceding year. The 2019 Table of Small Business Size Standards is available at *https://www.sba.gov/document/support--table-size-standards.*

1,000 consumers. If such an event occurs, the affected financial institution may expend costs to provide the Commission with the information required by the proposed reporting requirement. As noted in the PRA analysis above, the estimated annual cost burden for all entities subject to the proposed reporting requirement will be approximately $31,900.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other Federal statutes, rules, or policies currently in effect that would conflict with the proposed reporting requirement. The Commission invites comment on any potentially duplicative, overlapping, or conflicting Federal statutes, rules, or policies.

6. Discussion of Significant Alternatives to the Proposed Amendment

In drafting the proposed reporting requirement, the Commission has made every effort to avoid unduly burdensome requirements for entities. The proposed reporting requirement requires only that affected financial institutions provide the Commission with information necessary to assist it in the Commission's regulatory and enforcement efforts. The proposed rule minimizes burden on all covered financial institutions, including small business, by providing for reporting through an online form on the Commission's website.

In addition, the proposed rule requires only that security events involving at least 1,000 consumers must be reported, which will reduce potential burden on small businesses that retain information on fewer consumers. The Commission has invited comment on the 1,000-consumer threshold and whether an alternative threshold would better serve the goal of ensuring security events are reported while minimizing burden on covered institutions.

The Commission welcomes comment on any significant alternative consistent with the GLBA that would minimize the impact on small entities of the proposed reporting requirement.

List of Subjects in 16 CFR Part 314

Consumer protection, Credit, Data protection, Privacy, Trade practices.

For the reasons stated above, the Federal Trade Commission proposes to amend 16 CFR part 314 as follows:

PART 314—STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

■ 1. The authority citation for part 314 continues to read as follows:

Authority: 15 U.S.C. 6801(b), 6805(b)(2).

■ 2. In § 314.4, add paragraph (j) to read as follows:

§ 314.4 Elements.

* * * * *

(j) When you become aware of a security event, promptly determine the likelihood that customer information has been or will be misused. If you determine that misuse of customer information has occurred or is reasonably likely and that at least 1,000 consumers have been affected or reasonably may be affected, you must notify the Federal Trade Commission as soon as possible, and no later than 30 days after discovery of the event. The notice shall be made electronically on a form to be located on the FTC's website, *https://www.ftc.gov.* The notice shall include the following:

(1) The name and contact information of the reporting financial institution;

(2) A description of the types of information that were involved in the security event;

(3) If the information is possible to determine, the date or date range of the security event; and

(4) A general description of the security event.

■ 3. Revise § 314.5 to read as follows:

§ 314.5 Effective date.

Section 314.4(j) is effective as of [SIX MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE].

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2021–25064 Filed 12–8–21; 8:45 am]

BILLING CODE 6750–01–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 522

RIN 3141–AA73

Submission of Gaming Ordinance or Resolution

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (NIGC) proposes to amend the Submission of Gaming Ordinance or Resolution under the Indian Gaming Regulatory Act. The proposed rule would amend the regulations controlling the submission and approval requirements of tribal gaming ordinances or resolutions and amendments thereof. Notably, the proposed rule: Authorizes the submission of documents in electronic or physical form; clarifies that the submission requirements applies to amendments of ordinances or resolutions; eliminates the requirement that an Indian tribe provide copies of all gaming regulations with its submission; requires tribes to submit a copy of pertinent governing documents; initiates the 90-day deadline for the NIGC's Chair ruling upon receipt of a complete submission; and eliminates the requirement that the NICG Chair publish a tribe's entire gaming ordinance in the **Federal Register**.

DATES: The agency must receive comments on or before January 10, 2022.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: information@nigc.gov.*
- *Fax:* (202) 632–7066.
- *Mail:* National Indian Gaming Commission, 1849 C Street NW, MS 1621, Washington, DC 20240.
- *Hand Delivery:* National Indian Gaming Commission, 90 K Street NE, Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, National Indian Gaming Commission; Telephone: (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments providing the factual basis behind supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands.

On January 22, 1993, the NIGC published a final rule in the **Federal Register** called *Submission of Gaming Ordinance or Resolution.* 58 FR 5810. The rule added part 522, which established a process for Indian tribes to submit a gaming ordinance, resolution, or amendment for the NIGC Chair's review and approval as required by 25 U.S.C. 2710(b)(2) and (d)(2)(a). The NIGC's intent was to assist tribal gaming operators with maintaining compliance with IGRA and implement its provisions germane to gaming ordinances or resolutions. The Commission promulgated three minor amendments thereafter. 58 FR 16494, 73 FR 6029, and 80 FR 31994.

On March 23, 1993, the Commission amended its submission requirements at § 522.2(h) to include identification of a law enforcement agency that will take fingerprints and a description of the procedures for conducting a criminal history check by a law enforcement agency. 58 FR 16494.

On February 1, 2008, the Commission amended Part 522's submission requirements to codify that a tribe shall provide Indian lands or environmental and public health and safety documentation upon the NIGC Chair's request, 25 U.S.C. 2710(b), (2)(e), and (d)(1). 73 FR 6029.

On June 5, 2015, the Commission amended part 522 to remove and update references to other regulations and make minor grammatical changes. 80 FR 31994.

To date, it has been approximately twenty-eight years since the NIGC first promulgated part 522, with few revisions. During the intervening period, Indian gaming has undergone a meteoric expansion. One of the many benefits of that expansion includes the NIGC's continued utilization of part 522, which has manifested into a robust understanding of how to improve the regulations. The proposed amendments below codify that intent.

III. Development of the Proposed Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the gaming ordinance or resolution submission process. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendment to the gaming ordinance or resolution submission regulations are intended to improve the Agency's efficiency in processing gaming ordnance or resolution submissions, clarify existing regulations, and eliminate unnecessary obstacles for tribal gaming operators. The Commission held two virtual consultation sessions in July of 2021 to receive tribal input on the possible changes.

The Commission reviewed all of the public's comments and now proposes these changes, which it believes will improve the gaming ordinance or resolution submission process.

IV. Regulatory Matters

Regulatory Flexibility Act

The proposed rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rulemaking does not have an effect on the economy of $100 million or more. The rulemaking will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rulemaking have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rulemaking does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rulemaking does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rulemaking were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0003.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the gaming ordinance or resolution submission and approval process.

List of Subjects in 25 CFR Part 522

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

■ Therefore, for reasons stated in the preamble, the National Indian Gaming Commission proposes to revise 25 CFR part 522 is amended as follows:

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

Sec.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 522.1 Scope of this part.

This part applies to any class II or class III gaming ordinance or resolution or amendment thereto adopted by a tribe.

§ 522.2 Submission requirements.

A tribe shall submit to the Chair all of the following information with a request for approval of a class II or class III ordinance or resolution or amendment thereto:

(a) One copy of an ordinance or resolution certified as authentic by an authorized tribal official that meets the approval requirements in § 522.4(b) or § 522.6 of this part;

(b) A copy of the procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in § 556.2 of this chapter;

(c) A copy of the procedures to issue tribal licenses to primary management officials and key employees promulgated in accordance with § 558.3 of this chapter;

(d) A copy of the tribe's constitution, governing document(s), or an accurate and true description of the Tribe's governmental entity and authority to enact the submitted ordinance or resolution;

(e) When an ordinance or resolution concerns class III gaming, a copy of any approved tribal-state compact or class III procedures as prescribed by the Secretary that are in effect at the time the ordinance or amendment is passed;

(f) A copy of the procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(g) A copy of the designation of an agent for service under § 519.1 of this chapter; and

(h) Identification of the entity that will take fingerprints and a copy of the procedures for conducting a criminal history check. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

(i) A tribe shall provide Indian lands or tribal gaming regulations or environmental and public health and safety documentation that the Chair may request in the Chair's discretion. The tribe shall have 30 days from receipt of a request for additional documentation to respond.

§ 522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chair's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit to the Chair all of the following information with a request for approval of an amendment:

(1) One copy of the amendment certified as authentic by an authorized tribal official; and

(2) Any submission under § 522.2(b) through (h) of this part that have been modified since their prior conveyance to the Chair for an ordinance, resolution, or amendment approval.

(3) A conforming copy of the entire ordinance or resolution containing the requested modifications.

§ 522.4 Amendment approvals and disapprovals.

(a) No later than 90 days after the submission of any amendment to a class II ordinance or resolution that includes all the of information required by § 522.3(b) of this part, the Chair shall approve the amendment if the Chair finds that:

(1) A tribe meets the amendment submission requirements of § 522.3(b); and

(2) The amendment complies with § 522.5(b). No later than 90 days after a tribe submits any amendment to a class II ordinance for approval, the Chair may disapprove the amendment if it determines that a tribe failed to comply with the requirements of § 522.3 or (a)(1) and (2) of this section. The Chair shall notify a tribe of its right to appeal under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

(b) No later than 90 days after the submission of any amendment to a class III ordinance or resolution, the Chair shall approve the amendment if the Chair finds that—

(1) A tribe meets the amendment submission requirements of § 522.3(b); and

(2) The amendment complies with § 522.7(b) and (c).

(c) No later than 90 days after a tribe submits any amendment to a class III ordinance for approval, the Chair may disapprove the amendment if it determines that—

(1) A tribal governing body did not adopt the amendment in compliance with the governing documents of the tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the amendment by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(3) A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§ 522.5 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chair including all materials required under § 522.2 of this part, the Chair shall approve the class II ordinance or resolution if the Chair finds that:

(a) A tribe meets the submission requirements contained in § 522.2 of this part; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either § 522.11 or § 522.12 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than $25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included

within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

(8) A tribe that subsequently amends a gaming ordinance pending before the Chair shall also provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission.

§ 522.6 Disapproval of a class II ordinance.

No later than 90 days after a tribe submits an ordinance for approval under § 522.2 of this part, the Chair may disapprove an ordinance if it determines that a tribe failed to comply with the requirements of § 522.2 or § 522.5(b) of this part. The Chair shall notify a tribe of its right to appeal under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§ 522.7 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chair under § 522.2 of this part, the Chair shall approve the class III ordinance or resolution if:

(a) A tribe meets the submission requirements contained in § 522.2 of this part;

(b) The ordinance or resolution meets the requirements contained in § 522.5(b) (2), (3), (4), (5), (6), and (7) of this part; and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under § 522.11 of this part.

§ 522.8 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of § 522.7 of this part and no later than 90 days after a submission under § 522.2 of this part, the Chair shall disapprove an ordinance or resolution and notify a tribe of its right of appeal under part 582 of this chapter if the Chair determines that:

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of the tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§ 522.9 Publication of class III ordinance and approval.

The Chair shall publish notice of approval of class III tribal gaming ordinances or resolutions in the **Federal Register**, along with the Chair's approval thereof.

§ 522.10 Approval by operation of law.

If the Chair fails to approve or disapprove an ordinance or resolution or amendment thereto submitted under § 522.2 or § 522.3 of this part within 90 days after the date of submission to the Chair, a tribal ordinance or resolution or amendment thereto shall be considered to have been approved by the Chair but only to the extent that such ordinance or resolution or amendment thereto is consistent with the provisions of the Act and this chapter.

§ 522.11 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under § 522.12 of this part), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chair;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in § 522.4(b)(2) of this part;

(c) That not less than 60 percent of the net revenues be income to the tribe;

(d) That the owner pay an assessment to the Commission under § 514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits, and hours of operation.

§ 522.12 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under § 502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in § 522.11(a)–(d) of this part.

§ 522.13 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chair, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chair one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the **Federal Register** and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the **Federal Register** under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect:

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

Dated: November 18, 2021.

E. Sequoyah Simermeyer,

Chairman.

[FR Doc. 2021–25843 Filed 12–8–21; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0819; FRL–9266–01–R9]

Air Plan Approval; Arizona; Bullhead City; Second 10-Year PM_{10} Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Bullhead City portion of

the Arizona State Implementation Plan (SIP). These revisions concern the second 10-year maintenance plan for Bullhead City for the 1987 National Ambient Air Quality Standards (NAAQS or ''standards'') for particulate matter less than 10 micrometers in diameter (PM_{10}).

DATES: Comments must be received on or before January 10, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0819 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Panah Stauffer, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3247 or by email at *stauffer.panah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' refer to the EPA.

Table of Contents

I. Background

A. Clean Air Act Requirements and Air Quality Designations

The EPA has established health-based standards for PM_{10}. On July 1, 1987, the EPA promulgated two standards for PM_{10}: A 24-hour standard of 150 micrograms per cubic meter ($\mu g/m^3$) and an annual PM_{10} standard of 50 $\mu g/m^3$.[1] Effective December 18, 2006, the EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard.[2] In this document, references to the PM_{10} NAAQS or PM_{10} standard refer to the 24-hour average standard of 150 $\mu g/m^3$, unless otherwise noted.

Under section 107(d) of the CAA, the EPA is required to designate areas of the country, based on ambient air quality data, as attainment, unclassifiable, or nonattainment for each NAAQS. Under the CAA Amendments of 1990, the Bullhead City area was designated as part of a large ''unclassifiable'' area in Arizona for the PM_{10} NAAQS.[3] In 1993, in light of PM_{10} NAAQS violations monitored in 1989 and 1990, the EPA redesignated the Bullhead City air quality planning area as a ''Moderate'' nonattainment area for the PM_{10} standard.[4] To meet the SIP planning requirements for such areas, state and local agencies adopted and implemented a number of control measures to reduce PM_{10} emissions and lower ambient PM_{10} concentrations in the Bullhead City area, including paving of certain unpaved roads. In 2002, the EPA determined that the Bullhead City area had attained the PM_{10} NAAQS by the applicable attainment date of December 31, 2000.[5] The 24-hour standard is attained when the expected number of days with levels above 150 $\mu g/m^3$ (averaged over a 3-year period) is less than or equal to one.

B. Limited Maintenance Plan Option for the Bullhead City Area

Under CAA section 175A, one of the criteria for an area to be redesignated from nonattainment to attainment is the approval of a maintenance plan. The maintenance plan must, among other requirements, ensure control measures are in place such that the area will continue to maintain the standard for the period extending 10 years after redesignation and include contingency provisions to assure that violations of the NAAQS will be promptly remedied.

In 2002, the Arizona Department of Environmental Quality (ADEQ) submitted a maintenance plan, titled ''Bullhead City Moderate Area PM_{10} Maintenance Plan and Request for Redesignation to Attainment'' (February 2002) (''First 10-Year Limited Maintenance Plan'' or ''First 10-Year LMP'') to the EPA as a revision to the Arizona SIP, and requested that the EPA redesignate the Bullhead City area to attainment.[6] The First 10-Year LMP provided for maintenance of the PM_{10} NAAQS in the Bullhead City area for 10 years after redesignation. On June 26, 2002, the EPA approved the First 10-Year LMP for the Bullhead City area as providing for maintenance through 2012.[7]

The EPA's primary guidance on maintenance plans is a 1992 memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni memo'').[8] In August 2001, the EPA issued guidance on streamlined maintenance plan provisions for certain Moderate PM_{10} nonattainment areas seeking redesignation to attainment (''LMP policy'').[9] Herein, the option set forth in the LMP policy is referred to as the ''LMP option.''

The LMP policy does not require areas to project a demonstration of maintenance into the future. Instead, the LMP policy allows areas meeting certain air quality criteria to use a statistical

[1] 52 FR 24634 (July 1, 1987).

[2] 71 FR 61144 (October 17, 2006).

[3] For the definition of the Bullhead City maintenance area, see 40 CFR 81.303. The Bullhead City maintenance area is located in western Arizona. The original nonattainment area was defined by the equivalent of approximately six townships covering more than 200 square miles: T21N, R20–21W, excluding Lake Mead National Recreation area; T20N, R20–22W; and T19N, R21–22W, excluding the Fort Mohave Indian Reservation. On June 26, 2002, the EPA approved the State's request that some areas of undisturbed desert terrain containing no industrial or commercial activity be excluded from the Bullhead City PM_{10} planning area (67 FR 43020, 43022). As a result of the boundary change, the townships comprising the maintenance area include: T21N, R21W, excluding Lake Mead National Recreation Area; T20N, R21–22W; and T19N, R22W, excluding the Fort Mohave Indian Reservation.

[4] 58 FR 67334 (December 21, 1993).

[5] 67 FR 7082 (February 15, 2002).

[6] ADEQ, Bullhead City Moderate Area PM_{10} Maintenance Plan and Request for Redesignation to Attainment, February 2002.

[7] 67 FR 43020.

[8] Memorandum dated September 4, 1992 from John Calcagni, Director, Office of Air Quality Planning and Standards, to Directors of EPA Regional Air Programs.

[9] Memorandum dated August 9, 2001, from Lydia Wegman, Director, Office of Air Quality Planning and Standards, to Directors of EPA Regional Air Programs entitled ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' or ''LMP policy.''

method to demonstrate, with a high degree of probability, that the area will maintain the standard 10 years into the future. The maintenance demonstration requirement of the Act is considered to be satisfied when a moderate nonattainment area meets the air quality criteria outlined in the LMP policy, and there is no need for qualifying areas to project emissions over the maintenance period.

To qualify for the LMP option for redesignation to attainment, the area should be attaining the 1987 24-hour PM_{10} NAAQS and the average PM_{10} 24-hour design value concentration, based upon the most recent five years of air quality data at all monitors in the area, should be at or below 98 $\mu g/m^3$ or the respective site-specific critical design value (CDV). The CDV is a calculated design value concentration that indicates the area has a low probability (1 in 10) of exceeding the NAAQS in the future. In addition, the area should expect only limited growth in on-road motor vehicle PM_{10} emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP option also identifies core provisions that must be included in all LMPs. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions. If the State determines that the area in question meets the above criteria, it may select the LMP option for the first 10-year maintenance period.[10]

The LMP policy also states that once the LMP option is in effect, the state must verify in each subsequent year that the area still qualifies for the LMP option by recalculating the area's average design value concentration annually and determining that the LMP criteria are met for that year.

As noted above, in June 2002, the EPA approved the First 10-Year LMP for the Bullhead City area. This action affirmed that Bullhead City's plan met the limited maintenance plan requirements through 2012 and redesignated the area to attainment for the PM_{10} NAAQS.

II. Arizona's SIP Submittal

CAA section 175A(b) requires states to submit an additional SIP revision to maintain the NAAQS for 10 years after the expiration of the 10-year period covered by the initial maintenance plan approved in connection with the redesignation of the area from nonattainment to attainment. On May 24, 2012, ADEQ submitted a second 10-year maintenance plan, titled ''Limited Maintenance Plan Update for the Bullhead City PM_{10} Maintenance Area'' (May 2012) (''2012 Bullhead City Second 10-Year LMP'' or ''Second 10-Year LMP''), to meet the requirement for the subsequent maintenance plan under CAA section 175A(b). The 2012 Bullhead City Second 10-Year LMP is intended to provide for continued maintenance of the PM_{10} NAAQS for the 10-year period following the end of the first 10-year period, *i.e.,* through June 2022.

Consistent with the requirements at the time, the First 10-year LMP provided for maintenance of both the 24-hour average and annual average PM_{10} NAAQS. However, since then (as noted above), the EPA has revoked the annual average PM_{10} NAAQS, and thus, the Second 10-Year LMP addresses only maintenance of the 24-hour PM_{10} NAAQS.

III. The EPA's Evaluation of Arizona's SIP Submittal

A. Procedural Requirements

Section 110(l) of the act requires states to provide reasonable notice and public hearing prior to adoption of SIP revisions. Documents in ADEQ's submittal describe the public review process followed by ADEQ for the Second 10-year LMP for the Bullhead City area prior to adoption and submittal to the EPA as a revision to the Arizona SIP. The documentation provides evidence that reasonable notice of a public hearing was provided, and a public hearing was conducted prior to adoption.

The documentation is found in Enclosure 4 of the May 24, 2012 submittal. Enclosure 4 includes evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption. Specifically, the affidavit of publication included in Enclosure 4 shows that notices of a public hearing and the opening of a comment period of at least 30 days for the 2012 Bullhead City Second 10-Year LMP were published on March 23, 2012 and March 30, 2012, in a newspaper of general circulation within the Bullhead City area. The public hearing was held on May 3, 2012. No comments were received during the public comment period or at the public hearing. ADEQ adopted the plan and submitted it to the EPA for approval on May 24, 2012.

Based on the documentation provided in Enclosure 4 of the 2012 Bullhead City Second 10-Year LMP, we find that the submittal of the plan as a SIP revision satisfies the procedural requirements of section 110(l) of the Act.

B. Limited Maintenance Plan Option

Bullhead City qualified for the LMP option in 2002 for the first 10-year maintenance period. ADEQ's second 10-year maintenance plan provides the same categories of information as the first plan, based on the LMP option. In addition, the majority of the second maintenance period, which ends in 2022, has already passed and the area has not violated the standard during this period. For the reasons given below, we conclude that the Bullhead City area continues to qualify for the LMP option and that the 2012 Bullhead City Second 10-Year LMP meets all applicable requirements for subsequent maintenance plans under CAA section 175A(b).

1. Continued Attainment of the NAAQS

The first criterion for the LMP option is attainment of the NAAQS. Generally, the EPA determines whether an area's air quality is meeting the PM_{10} NAAQS based upon complete,[11] quality-assured, and certified data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state, local, or tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. These monitoring agencies certify annually that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of an area.[12] All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix K.

The PM_{10} standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one. The expected number of exceedances averaged over a three-year period at any given monitor is known as the PM_{10} design value. The PM_{10} design value for the area is the highest design value within the nonattainment area. Three consecutive years of air quality data are required to show attainment of the PM_{10} standard.[13]

[10] Id.

[11] For PM_{10}, a ''complete'' set of data includes a minimum of 75 percent of the scheduled PM_{10} samples per quarter. See 40 CFR part 50, appendix K, section 2.3(a).

[12] 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; and 40 CFR part 58, appendices A, C, D, and E.

[13] 40 CFR part 50, appendix K.

ADEQ is responsible for monitoring ambient air quality in the Bullhead City area and submits annual monitoring network plans to the EPA. The annual monitoring network plans submitted to the EPA discuss the status of, and describe the air monitoring network operated by ADEQ, as required under 40 CFR 58.10. The EPA reviews these annual monitoring network plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to PM_{10}, the EPA has found that ADEQ's annual monitoring network plans meet the applicable reporting requirements for the area under 40 CFR part 58. The EPA has also found that ADEQ currently meets or exceeds the requirements for the minimum number of SLAMS for PM_{10} in the Lake Havasu City-Kingman, AZ Metropolitan Statistical Area (MSA), which includes the Bullhead City PM_{10} maintenance area.[14]

The EPA also concluded from its 2018 Technical System Audit (TSA) that ADEQ's air monitoring program meets EPA requirements.[15] ADEQ annually certifies that the data it submits to the AQS database are quality-assured.[16]

Since November 1997, ADEQ has operated a SLAMS PM_{10} monitor in Bullhead City (AQS ID: 04–015–1003), located at the U.S. Post Office Building northeast of SR 95 and 7th Street. The surrounding area is commercial and residential to the west and south. The Colorado River lies to the west less than 300 meters. To the northeast/east, about 675 meters, is the Bullhead City Airport. The Second 10-Year LMP was submitted to EPA in 2012 and analyzes monitoring data from 2006–2010 for LMP qualification. During those years, ADEQ was operating the Bullhead City monitor on a once-every-sixth-day sampling schedule. ADEQ later switched to daily sampling in July 2012.

Table 1 shows the maximum monitored 24-hour PM_{10} concentrations at the Bullhead City monitoring site for 2001–2020. The table reflects that values for the Bullhead City area are typically well below the PM_{10} NAAQS of 150 $\mu g/m^3$, with some exceedances measured in 2012, 2013, and 2020.

TABLE 1—BULLHEAD CITY PM_{10} MAXIMUM 24-HOUR CONCENTRATIONS

[Bullhead City Monitor, AQS Identification Number 04–015–1003]

Year	Maximum concentration ($\mu g/m^3$)
2001	39
2002	55
2003	44
2004	48
2005	48
2006	72
2007	52
2008	46
2009	98
2010	33
2011	132
2012	185
2013	208
2014	108
2015	69
2016	119
2017	125
2018	118
2019	92
2020	185

Source: EPA Air Quality System Quicklook Report 2001–2021, accessed November 5, 2021.

Table 2 shows the estimated number of exceedances for the Bullhead City PM_{10} area for the three-year design value periods starting in 2001 and ending in 2020. The design values from 2001 through 2007 were invalid due to incomplete quarters in 2001, 2002, and 2005. However, there were no exceedances at the Bullhead City monitor from 2001 to 2007. Between the 2008 through 2020 design value periods, there were three exceedances of the NAAQS. However, no violations of the NAAQS (design values greater than 1.0) were recorded at the Bullhead City monitor from 2008 through 2020.

TABLE 2—BULLHEAD CITY PM_{10} DESIGN VALUES

[Bullhead City Monitor, AQS Identification Number 04–015–1003]

Design value period	Design value ($\mu g/m^3$)
1999–2001	[a] 0.0
2000–2002	[a] 0.0
2001–2003	[a] 0.0
2002–2004	[a] 0.0
2003–2005	[a] 0.0
2004–2006	[a] 0.0
2005–2007	[a] 0.0
2006–2008	0.0
2007–2009	0.0
2008–2010	0.0
2009–2011	0.0
2010–2012	[b] 0.3
2011–2013	[b] 0.7
2012–2014	[b] 0.7
2013–2015	0.3
2014–2016	0.0
2015–2017	0.0
2016–2018	0.0
2017–2019	0.0
2018–2020	0.3

Sources: EPA Air Quality System Design Value Report 2001–2020, accessed November 5, 2021, and EPA PM_{10} Design Value Spreadsheet, August 6th, 2015.

[a] Invalid design value due to incomplete data in data years 2001, 2002, and 2005.

[b] Due to a method change-out, AQS does not reflect the combination of the methods; however, the 2014 EPA PM_{10} design value spreadsheets manually calculated these design values.

As such, based on complete, quality-assured and certified data for the 2010 design value, we conclude that the Second 10-Year LMP submittal accurately reflected that the Bullhead City area was attaining the standard. Similarly, the most recent design value for 2020 continues to reflect attainment of the standard.

2. Five-Year Average Design Value Concentrations

The LMP guidance provides two methods for review of monitoring data for the purpose of meeting the second criterion for the LMP option. The first method is a comparison of a site's average design value concentration, based on the most recent 5 years of data, to 98 $\mu g/m^3$ for the 24-hour PM_{10} NAAQS. If the area cannot meet this test, then a second test can be calculated for determination of qualification. This second method is a comparison of the site-specific CDV with the site's average design value concentration. The CDV is a margin of safety value and is the value at which an area has been determined to have a 1 in 10 probability of exceeding the NAAQS.

TABLE 3—BULLHEAD CITY PM_{10} DESIGN CONCENTRATIONS AND 3-YEAR AVERAGE DESIGN VALUE CONCENTRATIONS

[Bullhead City Monitor, AQS Identification Number 04–015–1003]

Design value years	Design concentration ($\mu g/m^3$)
2006–2008	72
2007–2009	98

[14] Letter dated October 29, 2021, from Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, to Daniel Czecholinski, Director, Air Quality Division, Arizona Department of Environmental Quality.

[15] Letter dated April 25, 2019, from Elizabeth J. Adams, Director, Air Quality Analysis Office, EPA Region IX, to Timothy J. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality.

[16] Letter dated April 26, 2021, from Daniel Czecholinski, Director, Air Quality Division, Arizona Department of Environmental Quality to Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region 9.

TABLE 3—BULLHEAD CITY PM_{10} DESIGN CONCENTRATIONS AND 3-YEAR AVERAGE DESIGN VALUE CONCENTRATIONS—Continued

[Bullhead City Monitor, AQS Identification Number 04–015–1003]

Design value years	Design concentration (μg/m³)
2008–2010	98
Average Design Value Concentration (2006–2010)	89

TABLE 4—BULLHEAD CITY PM_{10} DESIGN CONCENTRATIONS AND 3-YEAR AVERAGE DESIGN VALUE CONCENTRATIONS

[Bullhead City Monitor, AQS Identification Number 04–015–1003]

Design value years	Design concentration (μg/m³)
2016–2018	110
2017–2019	92
2018–2020	102
Average Design Value Concentration (2016–2020)	101

ADEQ's Second 10-Year LMP submittal included data from 2006–2010. As noted in Table 3 above, the average design value concentration for that five-year period was 89 μg/m³. Because the average design value concentration was below 98 μg/m³, the area qualified for the LMP average PM_{10} design value concentration criterion based on the first method in the LMP guidance.[17] We also evaluated the most recent five-year period of 2016–2020; the average design value concentration was 101 μg/m³, as noted in Table 4 above. Because the average design value concentration was above 98 μg/m³ from 2016–2020, we conducted the additional comparison of the site-specific CDV with the site's average design value concentration and calculated a site-specific CDV for 2016–2020 of 128 μg/m³.[18] Because the average design value concentration was below the site-specific CDV, the area also qualified for the LMP average PM_{10} design value concentration criterion for 2016–2020 based on the second method in the LMP guidance. Based on both the time period in the Second 10-Year LMP submittal and the most recent five-year average design value concentration, the Bullhead City area meets the second criterion for the LMP option.[19]

3. Motor Vehicle Regional Emissions Analysis Test

The third criterion for the LMP option is referred to as the motor vehicle regional emissions analysis test. The methodology for this test is found in Attachment B to the LMP policy and is used to determine whether increased emissions from on-road mobile sources could, in the next 10 years, increase design value concentrations in the area. As a general matter, the methodology increases the monitor-based design value concentration based on the expected growth in motor vehicle traffic over the maintenance period. Specifically, the motor vehicle fraction of the design concentration is assumed to equal the motor vehicle fraction of the overall emissions inventory. The motor vehicle fraction of the design concentration is then multiplied by the projected percentage increase in vehicle miles traveled (VMT) in the area over the next 10 years. The product of this calculation is then added to the monitor-based design value concentration and compared with the 98 μg/m³ or site-specific CDV.

ADEQ calculated a site-specific CDV in its submittal for use in the motor vehicle regional emissions analysis test. ADEQ calculated its CDV with a 1 in 5 probability instead of the 1 in 10 probability provided in the LMP option. This made the site-specific CDV more stringent, or lower, and yielded a CDV of 101 μg/m³.

For comparison, EPA calculated a site-specific CDV for the same years using a 1 in 10 probability and using the average design value concentration, as described in the LMP option.[20] This calculation yields 114 μg/m³, which is higher than ADEQ's site-specific CDV calculation.

ADEQ's motor vehicle growth analysis demonstration yielded 99.6 μg/m³, which is lower than both site-specific CDV thresholds that ADEQ and the EPA calculated. However, ADEQ calculated the motor vehicle design value concentration based on the on-road mobile portion of the 2008 inventory instead of the entire mobile source emissions inventory. ADEQ also used the maximum design value concentration instead of the average design value concentration as the basis for calculating the motor vehicle fraction of the design concentration. Using the EPA's calculated average design value concentration of 89 μg/m³ and the full mobile source portion of the 2008 emissions inventory yields a motor vehicle design value concentration of 7.5 μg/m³ and a motor vehicle regional analysis value of 91.4 μg/m³.[21]

Both ADEQ's and the EPA's calculated motor vehicle regional analysis values are lower than ADEQ's calculated site-specific CDV threshold of 101 μg/m³ and the EPA's calculated site-specific CDV threshold of 114 μg/m³. Consequently, we confirm that the motor vehicle growth analysis the Second 10-Year LMP was within the margin of safety required by the LMP option. Therefore, the third criterion for eligibility for the LMP option for the second 10-year maintenance period is met. Both site-specific values of 101 μg/m³ and 114 μg/m³ are significantly above the Bullhead City average design value concentration, thereby reaffirming the second criterion as well.

In addition, the Second 10-Year LMP notes that Bullhead City is located in rural Mohave County. Like other rural counties, Bullhead City experienced population growth during the 1970s; this growth continued into the 1980s. Growth slowed in the 1990s and 2000s. The Second 10-Year LMP included Bullhead City's population of 39,540 as of the 2010 U.S. Census. The submittal noted that the population was projected to continue growing, but at a lower rate than had historically been observed. As of the 2020 Census, Bullhead City has a population of 41,348.[22] Although not directly related to the LMP option criteria, the low population growth in Bullhead City appears consistent with the Second 10-Year LMP's projection of low vehicle growth.

Under the LMP policy, the maintenance demonstration requirement under CAA section 175A is considered satisfied for areas meeting the three LMP criteria discussed above.

[17] In its Second 10-Year LMP submittal, ADEQ calculated the design value concentration for the years 2006–2010 as 98 μg/m³. That value was the maximum design concentration across all five years, rather than the average design value concentration (of the three most recent design value concentrations). We use the average design value concentration here of 89 μg/m³ because that is the value the LMP option intended to be compared with the CDV threshold.

[18] Technical Support Document (TSD) for the EPA's Rulemaking for the Arizona State Implementation Plan; Bullhead City Area 2nd Period Limited Maintenance Plan (LMP); November 2021.

[19] Our TSD includes additional CDV information for 2013–2020 (all complete data years with daily sampling).

[20] Technical Support Document (TSD) for EPA's Rulemaking for the Arizona State Implementation Plan; Bullhead City Area 2nd Period Limited Maintenance Plan (LMP); November 2021.

[21] See the EPA's TSD for additional details on our calculation.

[22] *https://www.census.gov/quickfacts/fact/table/bullheadcitycityarizona,mohavecountyarizona,AZ,US/POP010220* (last visited on October 25, 2021).

Because the Bullhead City area continues to meet the LMP criteria, we conclude that no further demonstration of maintenance through the second 10-year period is necessary.

C. Additional Maintenance Plan Requirements

1. Emissions Inventory

The State's approved attainment plan should include an emissions inventory (attainment inventory), which can be used to demonstrate attainment of the NAAQS. The inventory should represent emissions during the same five-year period associated with air quality data used to determine whether the area meets the LMP applicability requirements.

As part of the 2012 Bullhead City Second 10-Year LMP, ADEQ prepared a PM_{10} emissions inventory for 2008 for the Bullhead City area. 2008 is one of the years within the five-year period included in the Second 10-Year LMP PM_{10} design value concentration and thus is an acceptable inventory year. Based on ADEQ's estimates, shown in Table 5 below, on-road motor vehicles (including fugitive dust from entrainment of PM_{10} from travel on paved and unpaved roads, as well as exhaust, brake and tire wear) contributed approximately 8.4 percent to the total PM_{10} inventory, while construction and windblown dust contributed 9.2 and 82.4 percent, respectively. Industrial sources contributed less than 0.1 percent.

TABLE 5—2008 EMISSIONS INVENTORY FOR THE BULLHEAD CITY PM_{10} MAINTENANCE AREA

Source category	Bullhead City maintenance area PM_{10} emissions (tons per year)	Percent of total PM_{10} emissions in Bullhead City maintenance area
Unpaved Roads—Fugitive Dust	373.42	5.1
Paved Roads—Fugitive Dust	223.88	3.0
Paved and Unpaved Roads—Exhaust, Tire, and Brake Wear	18.93	0.3
Subtotal—Motor Vehicles	616.23	8.4
Construction	679	9.2
Windblown Dust	6075.1	82.4
Industrial Sources	5.26	Less than 0.1
Total	7,375.59	100

Source: Table 3.6 (p. 18) of the 2012 Bullhead City Second 10-Year LMP.

Section 3.2 of the 2012 Bullhead City Second 10-Year LMP describes the methodology used to develop the emissions inventory. The emissions inventory categories are the same as those identified in the first 10-year LMP, and the methodology used to determine the contribution of sources is largely the same as was used in the first 10-year LMP. ADEQ used updated emissions factors for each source category based on current emissions models, vehicle activity, population, and employment figures.

For instance, ADEQ updated motor vehicle emissions estimates using the EPA's National Mobile Inventory Model (NMIM) to develop emissions factors for motor vehicle exhaust, tire, and brake wear for motor vehicles. NMIM used the EPA's MOBILE6.2 emissions factors, which were the most current factors at the time the 2012 Bullhead City Second 10-Year LMP was being developed. ADEQ used updated emissions factors in the EPA's *Compilation of Air Pollutant Emissions Factors* (AP–42) to estimate PM_{10} entrained by vehicle movement over paved roads. ADEQ also updated the non-mobile source inventory with 2008 National Emissions Inventory (NEI) data, primarily by adjusting county-specific estimates by the ratio of population in the Bullhead City area to the population of Mohave County. For point sources in Bullhead City, ADEQ used industrial source data collected in an annual survey of permitted facilities.

During the period in which the draft 2012 Bullhead City Second 10-Year LMP was being developed, the EPA replaced MOBILE6.2 with a new motor vehicle emission factor model, known as Motor Vehicle Emission Simulator (or ''MOVES''). In response to an EPA request to consider the impact on the inventory due to the release of MOVES, ADEQ re-calculated the motor vehicle emissions estimates using MOVES and projected a 17.9 tons per year increase in emissions from motor vehicle exhaust, brake wear, and tire wear relative to the estimate made using MOBILE6.2.[23] This incremental increase corresponded to a 0.24 $\mu g/m^3$ increase in ADEQ's motor vehicle regional analysis calculation. As such, use of MOVES, rather than MOBILE6.2, did not affect the continued eligibility of the Bullhead City area to use the LMP option.[24]

Based on our review of the methods, models, and assumptions used by ADEQ to develop the PM_{10} emissions inventory, we find that the 2012 Bullhead City Second 10-Year LMP includes a comprehensive inventory of PM_{10} emissions and conclude that the plan's inventory is acceptable for the purposes of a subsequent maintenance plan, in this case, a subsequent LMP, under CAA section 175A(b).

Since submitting the Second 10-Year LMP, ADEQ has reported its emissions annually to the EPA under the Air Emissions Reporting Rule and has completed its reporting requirements for the 2011, 2014 and 2017 National Emissions Inventories.[25] For comparison with the 2008 emissions inventory in the Second 10-Year LMP, ADEQ provided 2011, 2014 and 2017 NEI data and windblown dust estimates for Bullhead City, as well as MOVES calculations for 2017.[26] The 2017 data are shown in Table 6 below along with the percentage of total emissions for each category.

[23] ADEQ, ''Bullhead City Update using MOVES,'' November 8, 2013.

[24] See the EPA's TSD for additional details.

[25] The docket for this rulemaking includes a spreadsheet of ADEQ's statewide emissions data for the 2011, 2014 and 2017 National Emissions Inventories.

[26] Email dated October 26, 2021, from Jessica Wood, ADEQ, to Panah Stauffer, EPA Region IX, Subject: ''Bullhead City EI Analysis,'' and attached ''Bullhead EI workbook'' spreadsheet.

TABLE 6—2017 EMISSIONS FOR THE BULLHEAD CITY PM_{10} MAINTENANCE AREA

Source sector	2017 PM_{10} emissions (tpy)	Percent of total PM_{10} emissions
Unpaved Road Dust	1,526.05	7.0
Paved Road Dust	202.56	0.9
MOVES Tire, Exhaust, and Brake wear	44.47	0.2
Subtotal—Motor Vehicles	1,773.09	8.1
Construction	119.71	0.5
Windblown Dust	19,891.89	91.3
Industrial Sources	0	0
Total	21,784.69	100

The motor vehicle fraction of the emissions inventory is approximately 8 percent for 2017, which is similar to the motor vehicle percentage of the 2008 inventory. The emissions calculated in MOVES have also not changed significantly, from 36.88 tpy in 2008 to 44.47 tpy in 2017. Construction dust in 2017 was approximately one-sixth of the 2008 emissions. All permitted industrial sources from the 2008 inventory had terminated their permits, were no longer required to hold a permit, or had ceased operation as of 2017.[27]

The calculated windblown dust emissions were significantly higher in 2017 than in 2008. This is likely because of a change in the frequency of wind measurements at the Bullhead City airport. The Bullhead City Airport's meteorological station began taking wind measurements every 20 minutes on February 20, 2009. Prior to this, the monitor was taking hourly measurements for only 8–12 hours out of the day.[28] Because the windblown dust figure is calculated using the number of hours when wind speed exceeded 24 mph, the lower frequency of readings and lower windblown dust figure in the 2008 inventory indicate that number in the Second 10-Year LMP was likely underestimated.[29]

In general, the inventory that was provided in the Second 10-Year LMP was comprehensive, and recent emissions confirm our conclusions about the submitted inventory and the area's LMP eligibility. Further, as noted above, the area has stayed in attainment and its second maintenance period will end in June 2022.

2. Control Measures

As discussed in our 2002 approval of the first 10-year LMP for the Bullhead City area, the measures that brought the area into attainment are permanent and enforceable.[30] The 2012 Bullhead City Second 10-Year LMP relies on the same control measures to continue to maintain the NAAQS for PM_{10} through 2022. These measures have not been revised and continue to be permanent and enforceable.

3. PM_{10} Air Quality Monitoring Network

As described earlier, ADEQ has operated a single PM_{10} monitoring site in the Bullhead City area since November 1997. Operating a single monitor in this area is consistent with the EPA's monitoring requirements. In Section 6 of the Second 10-Year LMP, ADEQ committed ''to continue to operate an appropriate PM_{10} air quality monitoring network to verify the attainment status'' of the Bullhead City area in accordance with 40 CFR part 58. In 2012, ADEQ replaced the PM_{10} sampler that operated on a once every sixth-day sampling period with a continuous (hourly) monitor. ADEQ's monitoring network continues to meet EPA's requirements for Bullhead City.

4. Contingency Provisions

Section 175A(d) states that a maintenance plan must include contingency provisions, as necessary, to ensure prompt correction of any violation of the NAAQS which may occur after redesignation of the area to attainment. These contingency provisions do not have to be fully adopted measures at the time of redesignation. However, the contingency provisions are considered to be an enforceable part of the SIP and the State should ensure that contingency measures are adopted as soon as possible once they are triggered by a specific event. The contingency provisions should identify the measure to be adopted and provide a schedule and procedure for adoption and implementation of the measure if required.

In the Second 10-Year LMP, ADEQ has, in most respects, carried forward the contingency provisions adopted in the first 10-year LMP, which EPA approved in 2002. First, ADEQ committed to continue to submit annual reports to the EPA that will include calculation of the Bullhead City area PM_{10} design value concentration to verify continued attainment and continued eligibility to use the LMP option.[31] ADEQ made a similar commitment in the first 10-year LMP and submitted reports of annual PM_{10} design value concentrations to the EPA for the first 10-year maintenance period. Since submitting the Second 10-Year LMP in 2012, ADEQ has continued to send reports of annual PM_{10} design value concentrations to the EPA. These annual reports are included in the docket for this proposed action.

Second, as part of the contingency provisions, ADEQ committed to determine whether PM_{10} NAAQS violations have been recorded within six months of the close of each calendar year, and to review and determine the appropriate contingency measure(s) by the end of the same calendar year.[32] Table 7 below lists the measures that ADEQ committed to consider for implementation in the event of a violation of the PM_{10} NAAQS or in the event the annual recalculation of the area's design value concentration exceeded the applicable LMP option

[27] Id.

[28] Id.

[29] The underestimated windblown dust figure in the 2008 emissions inventory does not affect the area's eligibility for the LMP Option The criteria for attainment and a design value concentration that falls below the 98 μg/m^3 or site-specific CDV are unaffected by emissions inventory numbers. The motor vehicle criterion for LMP eligibility would only have been strengthened by a higher windblown dust figure for 2008 because the motor vehicle fraction of the inventory would have decreased.

[30] 67 FR 43020 at 43025 (June 26, 2002).

[31] Section 6.0 of the 2012 Bullhead City Second 10-Year LMP.

[32] See section 5.3 of the 2012 Bullhead City Second 10-Year LMP.

criteria. ADEQ noted, ''the cause of the violation or exceedance of the LMP option criteria will help to determine the appropriate contingency measure(s) to be implemented.''

TABLE 7—BULLHEAD CITY AREA CONTINGENCY MEASURES

Contingency measures	Implementing entity
Review of Bullhead City grading ordinance to determine if additional action is needed	Bullhead City.
Increased enforcement efforts, or develop a compliance survey, for standards for the installation and maintenance of landscaping and screening (Bullhead City Zoning Regulation, Chapter 17.48, Landscaping and Screening Regulations).	Bullhead City.
Pave or stabilize unpaved roads located in the PM_{10} maintenance area	Bullhead City and/or Mohave County.
Pave additional unpaved parking areas in the Davis Camp Park (south beach parking areas)	Mohave County.
Cleanup of roadways after rainstorms	Mohave County.
Increase enforcement efforts, or develop a compliance survey, for the requirement for all commercial establishments to pave parking lots (Mohave County Zoning Regulations, Section 26 Off-Street Parking standards).	Mohave County.
Exercise authority under the Enhanced Smoke Management Plan—state and federal land managers conducting prescribed burning must register with ADEQ for proposed burning activities (Arizona Administrative Code R18–2-Article 15—Forest & Range Management Burns). ADEQ maintains the ability to deny permission for burning on certain high risk days (dependent on meteorological conditions) and may increase outreach and enforcement resources.	U.S. Forest Service, U.S. Bureau of Land Management, Arizona State Land Department, ADEQ.
Review of the requirement for dust control measures for material storage piles to determine if revision is needed (A.A.C. R18–2–607.	ADEQ.

Source: 2012 Bullhead City Second 10-Year LMP, Section 5.3, p. 25.

Finally, the State committed to implement the selected contingency measure(s) within one year of determining that a PM_{10} NAAQS violation has occurred. We conclude that these measures and commitments meet the requirements of CAA section 175A(d). The Bullhead City area did not violate the PM_{10} standard and has stayed in attainment with the PM_{10} NAAQS to date.

D. Transportation and General Conformity Requirements

Section 176(c) of the CAA requires that all federal actions conform to an applicable SIP. Conformity is defined in section 176(c) of the Act as conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The EPA has established criteria and procedures for federal agencies to follow in determining conformity of their actions. The EPA's rule governing transportation plans, programs, and projects approved or funded by the Federal Highway Administration or Federal Transit Administration is referred to as the ''transportation conformity'' rule,[33] and the EPA's rule governing all other types of federal agency actions is referred to as the ''general conformity'' rule.[34]

The transportation conformity rule and the general conformity rule apply to nonattainment and maintenance areas. Both rules provide that conformity can be demonstrated by showing that the expected emissions from planned actions are consistent with the emissions budget for the area. While the EPA's LMP option does not exempt an area from the need to affirm conformity, the LMP policy explains that the area may demonstrate conformity without submitting an emissions budget.

1. Transportation Conformity

Under the conformity rule, areas submitting an LMP for the second 10-year maintenance plan may demonstrate conformity without a regional emissions analysis as outlined in 40 CFR 93.109(e). Under the LMP option, emissions budgets are not treated as constraining for the length of the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a violation of the NAAQS would result. Therefore, in areas with approved LMPs, federal actions requiring conformity determinations under the transportation conformity rule are considered to satisfy the ''budget test'' required in 40 CFR 93.118.

While areas with maintenance plans approved under the LMP option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Because no metropolitan planning organization exists for Bullhead City, the Arizona Department of Transportation will still need to document and ensure that applicable conformity requirements are met. Specifically, for conformity determinations, projects will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105 and 40 CFR 93.112) and timely implementation (as applicable) of Transportation Control Measures (40 CFR 93.113). Projects in the Bullhead City area will also be required to be evaluated for potential PM_{10} hot-spot issues to satisfy the ''project level'' conformity determination requirements. As appropriate, a project may then need to address the applicable criteria for a PM_{10} hot-spot analysis as provided in 40 CFR 93.116 and 40 CFR 93.123.

Upon approval of the 2012 Bullhead City Second 10-Year LMP, the State (in this case, the Arizona Department of Transportation) will continue to be exempt from performing a regional emissions analysis but must continue to meet project-level analyses as well as the transportation conformity criteria mentioned above.

2. General Conformity

Federal actions, other than transportation conformity, that meet specific criteria need to be evaluated with respect to the requirements of 40 CFR part 93, subpart B. The EPA's

[33] 40 CFR part 93, subpart A.

[34] 40 CFR part 93, subpart B.

general conformity rule requirements are designed to ensure that emissions from a federal action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. However, as noted in the LMP policy and similar to the above discussed transportation conformity provisions, federal actions subject to general conformity requirements would be considered to satisfy the ''budget test,'' as specified in 40 CFR 93.158(a)(5)(i)(A). As discussed above, the basis for this provision in the LMP policy memorandum is that it is unreasonable to expect that an LMP area will experience so much growth during the maintenance period that a violation of the PM_{10} NAAQS would result. Therefore, for purposes of general conformity, a general conformity PM_{10} emissions budget does not need to be identified in the maintenance plan, nor submitted, and the emissions from federal agency actions are essentially considered to not be limited.

IV. The EPA's Proposed Action

Under CAA section 110(k), the EPA is proposing to approve the Second 10-Year LMP for the Bullhead City air quality planning area for the PM_{10} NAAQS that was submitted by ADEQ on May 24, 2012, as a revision to the Arizona SIP. The EPA is approving this plan based on the conclusion that it adequately provides for continued maintenance of the PM_{10} NAAQS in the Bullhead City area through 2022 and thereby meets the requirements for subsequent maintenance plans under section 175A of the Act. The effect of this action is to make the State's continuing commitments with respect to maintenance of the PM_{10} NAAQS in the Bullhead City area federally enforceable for the second 10-year maintenance period. These commitments include continued monitoring; continued implementation of control measures that were responsible for bringing the area into attainment; preparation and submittal of annual reports; consideration and implementation of contingency measures, as necessary; and submittal of a full maintenance plan if contingency measures fail to provide the required remedy.

V. Statutory and Executive Order Reviews

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

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

In addition, there are no areas of Indian country within the Bullhead City planning area, and the State plan for which the EPA is proposing approval does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 2, 2021.

Deborah Jordan,

Acting Regional Administrator, EPA Region IX.

[FR Doc. 2021–26619 Filed 12–8–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BK77

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 53

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

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico (Gulf) Fishery Management Council (Council) has submitted Amendment 53 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce (Secretary), Amendment 53 would modify the allocation of Gulf red grouper catch between the commercial and recreational sectors, specify a new overfishing limit (OFL) and acceptable biological catch (ABC), and revise sector annual catch limits (ACLs) and annual catch targets (ACTs). The purposes of Amendment 53 are to revise the red grouper sector allocations using the best scientific information available and to modify the allowable harvest of red grouper based on results of the recent stock assessment.

DATES: Written comments must be received by February 7, 2022.

ADDRESSES: You may submit comments on Amendment 53 identified by ''NOAA–NMFS–2021–0098'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter ''*NOAA–*

NMFS–2021–0098'' in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Electronic copies of Amendment 53, which includes an environmental impact statement, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, and electronic copies of a minority report submitted by four Council members, may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-53-e.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP being revised by Amendment 53, and, if approved, Amendment 53 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Unless otherwise noted, all weights in this document are in gutted weight.

Background

Red grouper in the Gulf exclusive economic zone (EEZ) are found primarily in the eastern Gulf on offshore hard bottom areas and are managed as a single stock with commercial and recreational ACLs and a sector ACTs. The allocation of the ACL between the commercial and recreational sectors is currently 76 percent commercial and 24 percent recreational and was set through Amendment 30B to the FMP (74 FR 17603; April 16, 2009).

Commercial red grouper fishing is managed under the Grouper-Tilefish Individual Fishing Quota (IFQ) program, which began January 1, 2010 through Amendment 29 to the FMP (74 FR 44732; August 31, 2009 and 75 FR 9116; March 1, 2010). Under the IFQ program, the commercial red grouper quota is based on the commercial sector's red grouper ACT (commercial quota), and red grouper allocation is distributed on January 1 of each year to those who hold red grouper shares. Both red grouper and gag, another grouper species managed under the IFQ program, have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag allocation, and vice versa. The multi-use provision is based on the difference between the respective ACLs and ACTs, and is explained in more detail below.

The recreational red grouper harvest is managed with catch limits, in-season and post-season accountability measures (AMs), season and area closures, a minimum size limit, and a recreational bag limit. The in-season AM for red grouper requires NMFS to close the recreational sector for the remainder of the fishing year when red grouper landings reach or are projected to reach the recreational ACL. If recreational landings exceed the red grouper recreational ACL in a fishing year, the post-season AM requires NMFS to shorten the length of the following recreational fishing season by the amount necessary to ensure landings do not exceed the recreational ACT. If the red grouper stock is overfished, NMFS must also reduce the ACL and ACT by the amount of the recreational ACL overage in the prior year. The recreational red grouper AMs were implemented in 2012 (77 FR 6988; February 10, 2012) and were modified in 2013 (78 FR 6218; January 30, 2013).

In 2018, the Council received a recommendation from its Scientific and Statistical Committee (SSC) to reduce the red grouper commercial and recreational ACLs and ACTs, effective for the 2019 fishing year. This recommendation was based on an interim red grouper analysis conducted by the Southeast Fisheries Science Center (SEFSC). The Council also heard concerns from fishermen about the condition of the red grouper stock because commercial and recreational harvests had been well below the respective quota and ACL. The SSC did not feel comfortable recommending a new acceptable biological catch based on the analysis but determined that the analysis did support recommending that the Council reduce the 2019 total ACL from 10.70 million lb (4.85 million kg) to 4.60 million lb (2.09 million kg). The Council noted the severe red tide conditions that occurred in the summer and fall of 2018 off the Florida west coast, and decided to further reduce the total ACL to an amount equivalent to the 2017 harvest of 4.16 million lb (1.89 million kg). The Council took action by initially requesting an emergency rule to reduce red grouper ACLs and ACTs (84 FR 22389, May 17, 2019), and then making the harvest reductions permanent in a subsequent framework action (84 FR 52036; October 1, 2019).

The Southeast Data, Assessment, and Review (SEDAR) 61 assessment was completed in September 2019, and used updated recreational catch and effort data from the Marine Recreational Information Program (MRIP) Access Point Angler Intercept Survey (APAIS) and Fishing Effort Survey (FES). MRIP began incorporating a new survey design for APAIS in 2013 and replaced the Coastal Household Telephone Survey (CHTS) with FES in 2018. Prior to the implementation of MRIP in 2008, recreational landings estimates were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS). As explained in Amendment 53, total recreational fishing effort estimates generated from MRIP FES are generally higher than both the MRFSS and MRIP CHTS estimates. For example, the current red grouper total ACL and recreational ACL in MRIP CHTS units are 4.16 million lb (1.89 million kg) and 1.00 million lb (0.45 million kg), respectively. In MRIP–FES units, that red grouper total ACL and recreational ACL would be an estimated 5.26 million lb (2.39 million kg) and 2.10 million lb (0.95 million kg), respectively. This difference is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden rise in fishing effort. NMFS developed calibrations models to adjust historic effort estimates so that they can be accurately compared to new estimates from MRIP FES. The calibration methodologies are discussed in Section 1.1 of Amendment 53 as well as in the SEDAR 61 final report. In addition, a publication titled ''Survey Design and Statistical Methods for Estimation of Recreational Fisheries Catch and Effort'' explains the different

recreational fishing surveys and the time-series calibration methods, and can be found at *https://media.fisheries.noaa.gov/2021-09/MRIP-Survey-Design-and-Statistical-Methods-2021-09-15.pdf.* This publication explains the different recreational fishing surveys and the time-series calibration methods.

The SEDAR 61 assessment concluded that the Gulf red grouper stock is not overfished and overfishing is not occurring, but that as of 2017, the stock remained below the spawning stock biomass (SSB) at 30 percent of the spawning potential ratio (SPR), where SPR is the ratio of SSB to its unfished state. Based on the results of SEDAR 61, the Council's SSC recommended an OFL of 5.35 million lb (2.43 million kg) and an acceptable biological catch (ABC) of 4.90 million lb (2.22 million kg). Because these catch levels are in MRIP–FES units, the recommended ABC appears to be larger than the current total ACL of 4.16 million lb (1.89 million kg), but would actually result in a decrease in allowable harvest when compared to the 5.26 million lb (2.39 million kg) MRIP–FES equivalent. In addition, these catch level recommendations assumed status quo sector allocations for red grouper, which were based in part on 1986–2005 MRFSS landings estimates from 1986–2005. As explained in Amendment 53, retaining the current allocation would increase the commercial ACL but substantially decrease the recreational ACL when comparing like units. Therefore, the Council requested that the SSC review alternative catch level projections based on sector allocation alternatives that used MRIP–FES data and several time series (1986–2005, 1986–2009, and 1986–2018). The SSC reviewed these alternative sector allocation scenarios, affirmed that the SEDAR 61 (2019) assessment, which included MRIP–FES recreational landings, represented the best scientific information available, and provided alternative catch level recommendations based on the allocation alternatives.

The commercial-recreational allocation impacts the catch level projections produced by the assessment. As more of the total ACL is allocated to the recreational sector, the proportion of recreational discards increases. Recreational discard mortality rates are assumed to be less than commercial discard mortality rates but the magnitude of recreational discards is considerably greater than commercial discards. Generally, a fish caught and released by a recreational fishermen has a greater likelihood of survival than by a commercial fishermen because of how and where they fish. However, because of the much higher numbers of red grouper that are released by the recreational sector vs the commercial sector, the total number of discards that die from the recreational fishing exceeds those from the commercial fishing. This results in additional mortality for the stock and a lower projected annual yield, which means a lower OFL, ABC, and total ACL. However, this is not due to any change in how the recreational sector prosecutes the fishery but occurs because MRIP–FES estimates higher levels of fishing effort, and consequently a greater number of fish being caught, which includes discards and the associated mortality of discarding fish.

Actions Contained in Amendment 53

Amendment 53 includes actions to set the sector allocations, OFL, ABC, sector ACLs, and sector ACTs for the red grouper stock in the Gulf.

Sector Allocation, OFL, and ABC

The current allocation is 76 percent commercial and 24 percent recreational. This allocation was set through Amendment 30B to the FMP in 2009 using commercial and recreational landings data from 1986–2005. This was the longest series available and was derived from the MRFSS. The current red grouper recreational ACL and ACT are in MRIP CHTS units. Therefore, although recreational landings are estimated using MRIP FES, they are converted to MRIP CHTS units to compare to the applicable recreational catch limit.

In Amendment 53, the Council considered several allocation alternatives: Maintaining the current allocation, maintaining the current commercial ACL and allocating the remaining pounds to the recreational sector, and using the various time series reviewed by the SSC to adjust the allocation to reflect the most recent understanding of historical landings. The Council decided to adjust the allocation using the same years used to set the current allocation in Amendment 30B to the FMP (1986–2005). The Council determined that this would best represent the historic landings for the years used in Amendment 30B while accounting for the change from MRFSS data to MRIP–FES data. Because the MRIP–FES landings estimates are greater than the previous estimates of recreational landings estimates, the commercial-recreational allocation would shift from 76 percent and 24 percent, respectively, to 59.3 percent and 40.7 percent, respectively. Based on the results of SEDAR 61 and using the proposed allocation of 59.3 percent commercial and 40.7 percent recreational, the Council's SSC recommended an OFL of 4.66 million lb (2.11 million kg) and an ABC of 4.26 million lb (1.93 million kg).

ACLs and ACTs

The total ACL would be equal to the ABC, or 4.26 million lb (1.93 million kg). Applying the allocation of 59.3 percent commercial and 40.7 percent recreational results in a 2.53 million lb (1.15 million kg) commercial ACL and a 1.73 million lb (0.78 million kg) recreational ACL in MRIP FES units. When compared to the current estimated recreational ACL in MRIP–FES units of 2.10 million lb (0.95 million kg) and current commercial ACL of 3.16 million lb (1.43 million kg) and, the Council's preferred alternative results in a reduction in the ACLs for the commercial and recreational sectors of approximately 20 percent and 18 percent, respectively.

The Council did not apply the ACL/ACT Control Rule to set the commercial buffer between the ACL and ACT. Normally, a sector managed using an IFQ program without a commercial quota overage during its reference period (as was the case for the 2016–2019 reference period) used by the Council for red grouper, would yield a 0 percent buffer from the control rule. However, both the red grouper and gag share categories in the IFQ program have a multi-use provision that allows a portion of the red grouper quota to be harvested under the gag multi-use allocation, and vice versa. Each year, the IFQ program assigns a portion of each shareholder's red grouper and gag as a multi-use allocation category. The intent of the multi-use provision is to provide for allocation if either gag or red grouper are landed as incidental catch. The amount of multi-use allocation is dependent on the difference in pounds between the commercial ACL and ACT. Therefore, the Council decided to maintain the current 5 percent buffer between the commercial red grouper ACL and ACT.

The Council did apply the ACL/ACT Control Rule to set the recreational sector buffer between the ACL and ACT. The ACL/ACT Control rule adjusts the buffer between the recreational ACL and ACT based on a number of factors, including the number and magnitude of ACL overages in the reference period, AMs in place to account for any ACL overages, and the method by which the ACL is monitored. Applying the control rule to 2016–2019 MRIP FES landings data yielded a buffer of 9 percent, one percentage point above the current 8 percent buffer.

Applying the commercial and recreational buffers to the proposed 2.53 million lb (1.15 million kg) commercial ACL and the 1.73 million lb (0.78 million kg) recreational ACL yields a proposed commercial ACT of 2.40 million lb (1.09 million kg) and a recreational ACT of 1.57 million lb (0.71 million kg) in MRIP–FES units.

Minority Report

A minority report signed by four Council members raises several objections to the preferred allocation in Amendment 53. The minority report alleges the preferred allocation violates several provisions of the Magnuson-Stevens Act, and that the Council did not act in accordance with its allocation policy.

Proposed Rule for Amendment 53

A proposed rule to implement Amendment 53 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 53 to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 53 for Secretarial review, approval, and implementation. Comments on Amendment 53 must be received by February 7, 2022. Comments received during the respective comment periods, whether specifically directed to Amendment 53 or the proposed rule, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 53. Comments received after the comment periods will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 53 or the proposed rule during their respective comment periods, as well as the issues raised in the minority report, will be addressed in the final rule.

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

Dated: December 1, 2021.

Ngagne Jafnar Gueye,

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

[FR Doc. 2021–26504 Filed 12–8–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 86, No. 234
Thursday, December 9, 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 AGRICULTURE

Submission for OMB Review; Comment Request

December 6, 2021.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by January 10, 2022. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Mink Survey.

OMB Control Number: 0535–0212.

Summary of Collection: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Mink Survey collects data on the number of mink pelts produced, the number of females bred, the value of pelts produced, and the number of mink farms. Mink estimates are used by the federal government to calculate total value of sales and total cash receipts, by State governments to administer fur farm programs and health regulations, and by universities in research projects.

Need and Use of the Information: NASS collects information on mink pelts produced by color, number of females bred to produce kits the following year, number of mink farms, average marketing price, and the value of pelts produced. The data is disseminated by NASS in the Mink Report and is used by the U.S. government and other groups.

Description of Respondents: Farms.

Number of Respondents: 253.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 87.

National Agricultural Statistics Service

Title: Cost of Pollination Survey.

OMB Control Number: 0535–0258.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue state and national estimates of crop and livestock production, prices, and disposition; as Start Printed Page 53270 well as economic statistics, environmental statistics related to agriculture, and to conduct the Census of Agriculture. Pollinators (honeybees, bats, butterflies, hummingbirds, etc.) are vital to the agricultural industry for pollinating numerous food crops for the world's population. Concern for honeybee colony mortality has risen since the introduction of *Varroa* mites in the United States in the late 1980s and the appearance of Colony Collapse Disorder in the past decade.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and the Office of Management and Budget regulations at 5 CFR part 1320. This survey is also conducted in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35.

Need and Use of the Information: NASS will collect economic data from crop farmers who rely on pollinators for their crops (fruits, nuts, vegetables, etc.). Data relating to the targeted crops are collected for the total number of acres that rely on honeybee pollination, the number of honeybee colonies that were used on those acres, and any cash fees associated with honeybee pollination. Crop Farmers are also asked if beekeepers who were hired to bring their bees to their farm were notified of pesticides used on the target acres, how many acres they were being hired to pollinate, and how much they were being paid to pollinate the targeted crops.

Description of Respondents: Farmers.

Number of Respondents: 18,000.

Frequency of Responses: Reporting: Once a year.

Total Burden Hours: 5,454.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–26690 Filed 12–8–21; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0015]

Privacy Act of 1974; System of Records

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget Circular No. A–108, the U.S. Department of Agriculture (USDA) give notice that a component agency, the Animal and Plant Health Inspection Service (APHIS) proposes to modify an existing system of records notice titled Emergency Management Response System (EMRS), USDA/APHIS–11. This system, among other things, helps APHIS to manage and investigate incidents of foreign animal diseases within the United States.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable upon publication, subject to a 30-day notice and comment period in which to comment on the routine uses described in the routine uses section of this system of records notice. Please submit any comments by January 10, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Enter APHIS–2020–0015 in the Search field. Select the Documents tab, then select the comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Dr. Fred G. Bourgeois, EMRS National Coordinator, Strategy and Policy, National Preparedness and Incident Command, VS, APHIS, Lake Charles, LA; (318) 288–4083; *fred.g.bourgeois@usda.gov.* For Privacy Act questions concerning this system of records notice, please contact Ms. Tonya Woods, Director, Freedom of Information and Privacy Act Staff, 4700 River Road, Unit 50, Riverdale, MD 20737; (301) 851–4076. For USDA Privacy Act questions, please contact the USDA Chief Privacy Officer, Information Security Center, Office of Chief Information Officer, USDA, Jamie L. Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250; email: *USDAPrivacy@usda.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) is modifying an existing system of records notice for APHIS' Emergency Management Response System (EMRS), USDA/APHIS–11, which was last published on April 30, 2008, in its entirety in the **Federal Register** (73 FR 23409–23412, Docket No. APHIS–2008–0039).[1]

EMRS is used by APHIS' Veterinary Services (VS) to help manage, coordinate, report, and investigate activities such as incidents of foreign animal diseases in the United States (including disposal, cleaning and disinfection, and associated indemnity payments), surveillance and control programs, State-specific disease outbreaks, national animal health emergency responses (all-hazards), and allow for tracing of animal movement and records, as well as premises and activity mapping. If an animal disease were to be detected in the United States, VS would activate its Incident Command System (ICS). ICS team members are trained to control and eradicate foreign animal diseases. As necessary and appropriate for the specific incident, team members would, among other things, confirm the presence of the disease, inspect infected and exposed animals, appraise the value of animals that may have to be destroyed, conduct vaccination programs and epidemiological studies, dispose of animal carcasses, and clean and disinfect premises. Records of these activities would be maintained in EMRS.

APHIS is making the following changes to the system of records notice:

- Updating the system location and system manager;
- Updating the purpose of the system;
- Expanding the categories of individuals to identify the roles of the APHIS employees included in the system and to add responders and coordinators since these individuals will participate in activities associated with the system;
- Making minor editorial changes to the categories of records;
- Revising the record source categories to add reference to a database within EMRS and to add that information in the system may be obtained from the Financial Modernization Incentive for payment status;
- Updating the policies and practices for storage, retrievability, and retention and disposal of records in the system;
- Updating the system safeguards;
- Updating the notification, record access, and contesting record procedures; and
- Deleting, revising, redesignating, and establishing routine uses as follows:
  - Revising current routine uses 1 and 2 to add reference to Tribal animal health officials and, in routine use 1, adding that information may be shared to identify premises before an event to allow for faster response;
  - Deleting current routine use 3 because EMRS has never shared data or connected data to/from the Department of Homeland Security's (DHS) National Biosurveillance Integration System (now known as Biosurveillance Common Operating Network (BCON)) and APHIS' Offshore Pest Information System (OPIS). However, if this should change, information would be shared with DHS' BCON system as described in routine uses 1 and 2. A routine use for OPIS is not needed since it is a system that is internal to USDA;
  - Revising current routine use 4 and redesignating it as routine use 3. The changes are editorial and intended to more accurately describe the referral of records to appropriate law enforcement agencies, entities, and persons;
  - Revising current routine use 5 and redesignating it as routine use 4. The changes are editorial and conforming changes;
  - Revising current routine use 6 and redesignating it as routine use 5. The changes are editorial and intended to more accurately describe the disclosure of records to a court or adjudicative body;
  - Revising current routine use 7 and redesignating as routine use 6. The changes are editorial and intended to more accurately describe the disclosure of records to appropriate agencies;
  - Establishing new routine use 7 for disclosure to another Federal agency or entity of information reasonably necessary to assist in responding to a suspected or confirmed breach or to prevent, minimize, or remedy harm, in accordance with Office of Management and Budget (OMB) Memorandum M–17–12 (Preparing for and Responding to a Breach of Personally Identifiable Information);
  - Revising current routine use 8. The changes are editorial and intended to more accurately describe disclosure to USDA contractors and other parties assisting in administering the program, analyzing data, information

[1] To view the notice, go to *www.regulations.gov* and enter APHIS–2008–0039 in the Search field.

management systems, Freedom of Information Act requests, and audits;

○ Removing current routine use 9 since this routine use is included in revised routine use 8;

○ Establishing new routine use 9 to describe disclosure to Congressional offices in response to an inquiry made at the written request of the individual to whom the record pertains; and

○ Revising current routine use 10 to more accurately reflect where record management inspections may occur.

A report on the modified system of records, required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–108, was sent to the Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate; the Chairwoman, Committee on Oversight and Reform, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, OMB.

Done in Washington, DC, this 30th day of November 2021.

Jack Shere,

Acting Administrator, Animal and Plant Health Inspection Service.

SYSTEM NAME AND NUMBER:

USDA/APHIS–11, Emergency Management Response System (EMRS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

The Animal and Plant Health Inspection Service (APHIS) located at 4700 River Road, Riverdale, MD 20737, is responsible for the system. EMRS records are maintained in a Government-approved cloud server accessed through secure data centers in the continental United States. Paper files are held at various Veterinary Services (VS) national, district, and field offices. Due to the number of offices, specific addresses can be found at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/contact-us.* Cloud service providers are MS Azure Government (US Gov Virginia), 101 Herbert Dr., Boydton, VA 23917 (Eastern Region); and MS Azure Government (US Gov Texas), 5150 Rogers Road, San Antonio, TX 78251 (Western Region).

SYSTEM MANAGER:

EMRS National Coordinator, National Preparedness & Incident Coordination, Veterinary Services, APHIS, USDA, Lake Charles, LA; (318) 288–4083.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Animal Health Protection Act (7 U.S.C. 8301 *et seq.*).

PURPOSES OF THE SYSTEM:

APHIS' VS program uses EMRS to help manage, coordinate, report, and investigate activities such as incidents of foreign animal diseases in the United States (including disposal, cleaning and disinfection, and associated indemnity payments), surveillance and control programs, State-specific disease outbreaks, national animal health emergency responses (all-hazards), and allow for tracing of animal movement and records, as well as premises and activity mapping. To fulfill this purpose, EMRS allows for APHIS to use visualization software to build premises maps and epidemiological models. EMRS will also maintain information concerning APHIS employees who may be deployed as members of Incident Command System teams.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system include, but are not limited to, customers, such as State animal health officials and industry, who obtain services under EMRS, including the owner or operator of the premises where the animals subject to investigation are located and the referring contact who provided initial premises information; APHIS employees involved in the diagnostic and investigation activities; and responders and cooperators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include:

Owner or operator of the premises where the animals subject to investigation are located; the system includes the following information, such as, but not limited to, the name; address (including city, county, State, postal code, and latitude/longitude coordinates); premises identification number; and telephone number.

Referring contact information, which includes name and telephone number.

Case coordinator of the premises investigation. (The system includes name, telephone number, and email address.)

APHIS employees. (The system includes information such as, but not limited to, the name; agency, program, and group; current duty assignment; encrypted employee identification number; grade, series, and step; duty city and State; home address, including latitude/longitude coordinates; home telephone number; home email address; emergency contact information; work and field addresses, email addresses and telephone numbers; supervisor contact information; personal protective equipment type, size, and model; existing and desired skills, experience and training; position certifications; AgLearn training classes; medical clearance information; and a description of property or fleet vehicle assigned to the employee.)

The system will also include nicknames, titles, and organization for the entities above, as applicable.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the customers, including the owner or operator of the premises where the animals subject to investigation are located, the referring contact who provided initial premises information, and case coordinator. Such information may be supplemented by information from an address-validation database, by APHIS personnel during an on-site investigation, by State and Tribal veterinary offices and State laboratories, or by APHIS' National Veterinary Services Laboratories. Information may also be obtained from the Financial Management Modernization Incentive for payment status. Employee information is obtained primarily from the employee. Additionally, employee information may be obtained from the U.S. Department of Agriculture's (USDA's) National Finance Center, AgLearn database, and Federal Occupational Health, U.S. Department of Health and Human Services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records contained in the system may be disclosed outside USDA as a routine use under 5.U.S.C. 552a(b)(3), to the extent that such uses are compatible with the purposes for which the information was collected. Such permitted routine uses include the following:

(1) To certain Federal, State, and Tribal animal health officials to identify premises before an event to allow for faster response, monitor the status of an animal disease investigation, document actions taken relating to an animal disease investigation, track the status of animals susceptible to foreign animal diseases, determine the costs of an animal disease investigation, monitor the use and availability of assets and personnel relating to animal disease investigations, or perform epidemiological and geospatial analyses of such investigations;

(2) To Federal, State, and Tribal animal health officials within the system to obtain feedback regarding the

EMRS system and emergency preparedness guidelines, and to educate and involve them in program development, program requirements, and standards of conduct;

(3) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program, statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, Tribal, local, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity;

(4) To the Department of Justice when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity, where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which USDA collected the records;

(5) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when USDA or other Agency representing USDA determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(6) To appropriate agencies, entities, and persons when: (a) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(7) To another Federal agency or Federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security;

(8) To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the USDA, when necessary to accomplish an agency function related to this system of records;

(9) To a Congressional office in response to an inquiry from that Congressional office made at the written request of the individual about whom the record pertains; and

(10) To the National Archives and Records Administration (NARA) or other Federal Government agencies pursuant to records management inspections being conducted under 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored on servers located as indicated above under ''System Locations''. Paper files are held at various VS national, district, and field offices that are locked during non-business hours and require presentation of employee identification for admittance and access at all times.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Data can be retrieved only by personnel who successfully authenticate using their eAuthentication PIV or eAuthentication username/password credential and are authorized with specific EMRS role(s). Data can be retrieved by premises identification number, reference control number, name, premises, incident group, or incident site. Data regarding an employee, cooperator, or responder can be retrieved by name, nickname, employee identification number, title, organization, property, or fleet vehicle.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with NARA-approved records disposition authorities, paper records will be retained for the following periods of time: All incident-related premise record data associated with a foreign animal disease investigation will be retained for a period of 50 years. For the remaining records, APHIS is in the process of preparing a records disposition request from NARA, and these records will be retained until appropriate disposition authority is obtained from NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The EMRS safeguards include management, operational, and technical controls to prevent misuse of data by system users. These controls include role-based access. State and Tribal entities have access limited to data from their State or area. Access to the restricted portions of the database system requires certain levels of authorization through USDA eAuthentication, which is a system that enables individuals to obtain user-identification accounts with password-protected access to certain USDA web-based applications and services through the internet. APHIS personnel who input data must have a high-level eAuthentication account.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be submitted to the APHIS Privacy Act Officer, 4700 River Road, Unit 50, Riverdale, MD 20737; or by facsimile (301) 734–5941; or by email *APHISPrivacy@usda.gov.* In accordance with 7 CFR 1.112 (Procedures for requests pertaining to individual records in a record system), the request must include the full name of the individual making the request; the name of the system of records; and preference of inspection, in person or by mail. In accordance with 7 CFR 1.113, prior to inspection of the records, the requester shall present sufficient identification (*e.g.,* driver's license, employee identification card, social security card, credit cards) to establish that the requester is the individual to whom the records pertain. In addition, if an individual submitting a request for access wishes to be supplied with copies of the records by mail, the requester must include with his or her request sufficient data for the agency to verify the requester's identity.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their request to the address indicated above in the ''RECORD ACCESS PROCEDURES'' paragraph and must follow the procedures set forth in 7 CFR 1.116 (Request for correction or

amendment to record). All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

On April 30, 2008 (73 FR 23409–23412, Docket No. APHIS–2008–0039), USDA/APHIS–11, ''Emergency Management Response System'' was published as a new system of records and effective on June 9, 2008.

[FR Doc. 2021–26684 Filed 12–8–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–21–Business–0036]

Notice of Funding Opportunity for the Food Supply Chain Guaranteed Loan Program

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business—Cooperative Service (Agency), an agency of the United States Department of Agriculture (USDA) Rural Development mission area (RD) announces the availability of approximately $1,000,000,000 in loan guarantees, applicant and application requirements, and servicing requirements under the Food Supply Chain (FSC) Guaranteed Loan Program for fiscal year (FY) 2022. Loan guarantees will be made to lenders to facilitate financing to qualified borrowers and projects for the start-up or expansion of activities in the middle of the food supply chain, particularly the aggregation, processing, manufacturing, storage, transportation, wholesaling, or distribution of food, to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain.

DATES: Completed applications may be submitted beginning December 9, 2021. Awards will be made no earlier than February 7, 2022. Applications will be accepted until funds are exhausted.

ADDRESSES: You are encouraged to contact the Agency to discuss your project and ask any questions about the program or application process. Applications will only be accepted electronically by following the directions provided at *https://www.rd.usda.gov/foodsupplychainloans.*

Entities wishing to apply for assistance may download the application documents and requirements delineated in this notice from: *https://www.rd.usda.gov/foodsupplychainloans.*

FOR FURTHER INFORMATION CONTACT: Jeff Hudson, Rural Business—Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Mail Stop 3201, Room 5801—South, Washington, DC 20250–3201; *rdfoodsupplychainloans@usda.gov,* or phone 715–345–7636.

SUPPLEMENTARY INFORMATION: All applicants are responsible for any expenses incurred in developing their applications.

The lender is responsible for assuring that all requirements for making, securing, servicing, and collecting the loan have been met.

Whether specifically stated or not, whenever Agency approval is required, it must be in writing. Copies of all forms and regulations referenced in this notice may be obtained from any Agency office and from the USDA RD website at *https://www.rd.usda.gov/foodsupplychainloans.*

Overview

Federal Agency Name: Rural Business—Cooperative Service.

Funding Opportunity Title: Food Supply Chain Guarantee Loan Program.

Announcement Type: Initial Notice.

Assistance Listing Number: 10.380.

Dates: Applications will be accepted beginning December 9, 2021. Application acceptance will continue until all funds are expended.

Administrative: Applicants are encouraged to consider projects that will advance the following key priorities (additional information on the key priorities is available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

In addition, the Agency highlights the importance of strengthening resiliency of the broader food supply chain, including through addressing current supply chain related disruptions. The Agency will consider applications as they are submitted. If available funding is less than what is requested by applications under consideration, the Agency will score each eligible application based on the point system described herein. When applications on hand have the same priority score, the Agency will give preference to applications involving guaranteed loans from veterans.

Hemp Related Projects: Please note that no assistance or funding from this program can be provided to a hemp producer unless they have a valid license issued from an approved State, Tribal or Federal plan as per section 10113 of the Agriculture Improvement Act of 2018, Public Law 115–334. Verification of valid hemp licenses will occur at the time of award.

A. Program Description and Overview

(a) *Purpose of the program.* Food Supply Chain (FSC) guaranteed loans are available to qualified applicants and projects to facilitate financing for the start-up or expansion of activities in the middle of the food supply chain, particularly the aggregation, processing, manufacturing, storing, transporting, wholesaling, or distribution of food, to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain. As reflected in the public comments to AMS–TM–21–0034, *Supply Chains for the Production of Agricultural Commodities and Food Products,* 86 FR 20652 (April 21, 2021), financing for infrastructure as a strategy to strengthen the food supply chain was identified as a need not only for small and mid-sized meat and poultry processors, but across other stages of the food supply chain, including distribution and aggregation.

This program will expand access to financing for food systems infrastructure in the near term and will serve as a pilot program to inform the other programs authorized under Section 1001 of the American Rescue Plan Act of 2021 (American Rescue Plan Act). This program will facilitate access to affordable capital to address the ongoing need for food systems enterprises in America's rural and urban communities, as there are no geographic restrictions.

(b) *Statutory authority.* Section 1001(b)(4) of the American Rescue Plan Act authorizes the Secretary of Agriculture to ''. . . make loans and grants and provide other assistance to maintain and improve food and

agricultural supply chain resiliency.'' Given this authority, and appropriation provided for this purpose in Section 1001, Paragraph (a), $100 million in budget authority is being made available for the Food Supply Chain Guaranteed Loan Program.

(c) *Notice overview.*

(1) This notice contains general provisions for making and servicing FSC loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(2) The lender is responsible for assuring compliance with all requirements for making, securing, servicing, and collecting repayment on guaranteed loans.

(3) Whether specifically stated or not, whenever Agency approval is required, the lender is obligated to obtain written approval from the Agency.

(4) All forms and regulations referenced in this notice may be obtained from the USDA Rural Development website at *https://www.rd.usda.gov/foodsupplychainloans.*

(d) *Definitions.* The following definitions are applicable to this notice:

Administrator. The Administrator of Rural Business—Cooperative Service within the Rural Development mission area of the U.S. Department of Agriculture.

Affiliate. A person where one of the following circumstances exists:

(1) The person controls or has the power to control another person, or a third party or parties controls or has the power to control both. Factors such as ownership, management, current and previous relationships with or ties to another person, and contractual relationships, shall be considered in determining whether affiliation exists. It does not matter whether control is exercised, so long as the power to control exists. Entities owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Native Hawaiian Organizations (NHOs) or wholly owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other entities owned by these entities solely because of their common ownership or common management.

(2) There is a family relationship and identical or substantially identical business or economic interests amongst persons (such as where an immediate family member operates entities in the same or similar industry in the same geographic area); however, a person may rebut such determination with evidence showing that the business or economic interests are not identical or substantially identical.

Agency. The Rural Business—Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the Food Supply Chain Guaranteed Loan Program.

Arm's-length transaction. A transaction in which the buyer and seller act independently and have no relationship to each other. The concept of an arm's length transaction allows the market to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

Assignment Guarantee Agreement. A signed, Agency-approved agreement among the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or note from the lender to the holder.

Bond. A form of debt security in which the authorized issuer (borrower) owes the bond holder (lender) a debt and is obligated to pay interest at specified intervals and repay the principal at a specified maturity date. An explanation of the type of bond and other bond stipulations must be attached to the bond.

Borrower. The person that borrows, or seeks to borrow, money from the lender (including any party or parties liable for the guaranteed loan except guarantors) through a loan guaranteed under this program notice.

Certificate of Incumbency and Signature. An Agency-approved form used to validate authenticity of Agency representatives' signatures and titles.

Collateral. The asset(s) pledged by the borrower to the lender to secure the guaranteed loan.

Commercially available. A system that meets the requirements of either paragraph (1) or (2) of this definition.

(1) A domestic or foreign system that:

(i) Has both a proven and reliable operating history and proven performance data for at least one year specific to the use and operation to the proposed application;

(ii) Is based on established design and installation procedures and practices and is replicable;

(iii) Has professional service providers, trades, large construction equipment providers, and labor who are familiar with installation procedures and practices;

(iv) Has proprietary and balance of system equipment and spare parts that are readily available;

(v) Has service that is readily available to properly maintain and operate the system; and

(vi) Has an existing established warranty that is valid in the United States for major parts and labor; or

(2) A domestic or foreign system that has been certified by a recognized industry organization whose certification standards are acceptable to the Agency.

Complete application. An application that contains all parts necessary for the Agency to determine borrower and project eligibility, and the financial feasibility and technical merit of the project and contains sufficient information to determine a priority score for the application, if applicable, as determined by the Agency.

Conditional Commitment. An Agency-approved form in which the Agency agrees that, in accordance with applicable provisions of this notice and related forms, it will execute the loan note guarantee, subject to the conditions and requirements specified in applicable provisions of this notice and in the conditional commitment.

Conflict of interest. A situation in which a person has personal, professional, or financial interests that prevents, or appears to prevent the person from acting impartially. For purposes of this notice, conflict of interest also includes, but is not limited to:

(1) A person acting as a compensated agent of the borrower and the lender on the same guaranteed loan;

(2) Distribution or payment of guaranteed loan funds to an individual owner, partner, stockholder, or member of the borrower, or to a beneficiary or immediate family member of the borrower; or

(3) Refinancing debt that is owned by a loan packager, broker, or referral agent or its affiliates.

Cooperative. An entity that is legally chartered by the State or Tribe in which it operates as a cooperatively-operated business, or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Credit evaluation. An analysis and evaluation by the lender of the credit factors associated with each application to ensure loan repayment using credit documentation procedures and an underwriting process that is consistent with industry standards and the lender's written policy and procedures.

Debt Collection Improvement Act. The Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*

Debt service coverage ratio. The ratio obtained when taking earnings before interest, taxes, depreciation, and amortization less reasonably expected replacement capital expenditures divided by the annual debt service (principal and interest payments) of the borrower.

Default. The condition that exists when a borrower is not in compliance with the promissory note, the loan agreement, or other documents relating to the loan. Default could be a monetary or non-monetary default.

Delinquency/Delinquent loan. A loan for which a scheduled loan payment is more than 30 days past due and cannot be cured within 30 days.

Existing business. A business that has been in operation for at least one full year and has achieved full operational capacity or stable operations in accordance with its executive summary, feasibility study, historical financial records, and financial projects, as determined by the Administrator. Mergers or changes in the business name or legal type of entity of a business that has been in operation for at least one full year are considered to be existing businesses as long as there is not a significant change in operations. Newly formed entities that are buying existing businesses will be considered an existing business as long as the business being bought remains in operation and there is no significant change in operations or expertise of management.

Existing lender debt. A debt owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Farmer or rancher cooperative. An entity that is owned and controlled by agricultural producers and that is incorporated, or otherwise recognized by the State or Tribe in which it operates as a cooperatively-operated business or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Federal debt. Debt owed to the Federal Government that is subject to collection under the Debt Collection Improvement Act.

Final loss claim. The Agency's payment of a final settlement amount with the lender after the collateral on a delinquent loan is liquidated or after settlement and compromise actions have been completed and as further set forth in 7 CFR 5001.521(e).

Food. For the purpose of this notice, food or food product for human consumption except alcoholic beverages, tobacco, and dietary supplements.

Future recovery. Funds collected by the lender after a final loss claim is processed.

Guaranteed loan. A loan made and serviced by a lender for which the Agency and lender have entered into a lender's agreement and for which the Agency has issued a loan note guarantee. Unless otherwise specified, guaranteed loan refers to a loan that the Agency has guaranteed under this notice.

Guarantor. A person who is legally obligated to make full payment to the Agency under an Agency-approved written agreement in the event that the borrower fails to meet its payment obligations on its guaranteed loan.

Holder. A person, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities.

Immediate family. Individuals who live in the same household or who are closely related by blood, marriage, or adoption, including a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Indian tribe. Means the term as defined in 25 U.S.C. 5131.

In-house expenses. Expenses associated with activities that are routinely the responsibility of a lender's internal staff, including in-house lawyers, or its agents and that are normally incurred for administration of the loan. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Inspector. A qualified consultant who has at least three years of experience and has completed at least five inspections on similar type projects.

Intangible asset. An asset that lacks physical substance. This includes, but is not limited to, copyrights, patents, capitalized franchise fees, goodwill, customer lists, software, organizational expenses, loan closing expenses, social media assets, and bond fees.

Interest. A fee paid by a borrower to the lender as a form of compensation for the use of money. When money is borrowed, interest is paid as a fee over a certain period of time (typically months or years) to the lender as a percentage of the principal amount owed. The term interest does not include default or penalty interest or late payment fees or charges.

Interest termination date. The date on which no further interest will be payable by the Agency under the loan note guarantee.

Interim financing. A temporary or short-term loan made with the clear intent when the loan is made that it will be repaid through another loan that provides permanent financing. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after completion of project construction.

Lender. The eligible lender approved by the Agency to originate, service, and collect payments on loans guaranteed under this notice.

Lender's agreement. The Agency-approved form of contract between the Agency and the lender setting forth the lender's guaranteed loan responsibilities.

Liquidation expenses. Costs directly associated with the liquidation of collateral, including, without limitation, costs associated with preparing collateral for sale (*e.g.,* repairs and transport), the sale (*e.g.,* advertising, public notices, auctioneer expenses, and foreclosure fees), and conducting appraisals. Legal fees are considered liquidation expenses provided that the fees are reasonable as determined by the Agency and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house legal staff. Liquidation expenses do not include in-house expenses.

Loan agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender, including the terms of the borrower's repayment of the loan.

Loan classification. The process by which loans are examined and categorized by the probability of default and degree of potential loss in the event of default.

Loan note guarantee. The Agency-approved form containing the terms and conditions of the guarantee of an identified guaranteed loan.

Loan packager. A person, other than the applicant borrower or lender, that prepares a loan application package on behalf of the borrower or lender.

Loan-to-discounted value. The ratio of the dollar amount of a loan to the discounted dollar value of the collateral pledged as security for the loan.

Material adverse change. Any change in circumstance associated with a guaranteed loan, including without limitation, any change in the purpose of the loan, the borrower's financial condition or collateral, that, individually or in the aggregate, has jeopardized, or could be reasonably expected to jeopardize, the borrower's repayment of the guaranteed loan.

Monetary default. A failure to make a scheduled or required payment on a guaranteed loan.

Multi-note system. An option for the lender to provide one promissory note for the unguaranteed portion and a separate promissory note(s) for the guaranteed portion of the loan. All promissory notes must reflect the same payment terms.

National Appeals Division (NAD). A division of the United States Department of Agriculture as described in 7 CFR part 11.

Negligent loan origination. The failure of a lender to perform those services that a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing. The failure of a lender to perform those services or actions that a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

New business. A startup or otherwise new business that has been in operation for less than one full year and a business that has been in operation for at least one full year and has not achieved full operational capacity or stable operations in accordance with its executive summary, feasibility study, historical financial records, and financial projects, as determined by the Administrator, including a new enterprise or new affiliate of an existing business moving or expanding into a new location involving new market or labor areas.

Non-monetary default. A situation where a borrower is not in compliance with the covenants or requirements of the loan documents or program requirements.

Parity. A lien position whereby two or more lenders or loans share a security interest of equal priority in collateral.

Participation. Sale of an interest in a loan by the lead lender to one or more participating lenders wherein the lead lender retains the note, collateral securing the note, and all responsibility for managing and servicing the loan. Participants are dependent upon the lead lender for protection of their interests in the loan. The relationship is typically formalized by a participation agreement. The participants and the borrower have no rights or obligations to one another.

Passive investor. An equity investor who does not actively participate in management and operation decisions of the borrower or any affiliate of the borrower as evidenced by a contractual agreement.

Person. An individual or entity organized under the laws of a State or an Indian Tribe.

Program. Program means the Food Supply Chain Guaranteed Loan Program authorized by the American Rescue Plan Act of 2021 and administered by the Agency.

Promissory note. The legal instrument evidencing debt executed by the borrower to a lender with stipulated repayment terms. The term promissory note includes bonds and other related debt instruments issued by the lender to a borrower.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the borrower has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances for property taxes, rent, hazard and flood insurance premiums, emergency repairs and annual assessments that protect the collateral. Legal and accounting fees are not protective advances.

Public body. A state, municipality, county, or other political subdivision of a State; a special purpose district; an Indian tribe on a Federal or State reservation or other federally-recognized Indian tribe; or an organization controlled by any of the above.

Qualified consultant. An independent third-party person possessing the knowledge, expertise, and experience to perform the specific task required.

Socially disadvantaged group. A group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

Spreadsheet. A table containing data from a series of financial statements of a business over a specified period. A financial statement analysis normally contains spreadsheets for balance sheet and income statement items and includes a cash flow analysis and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordination. An agreement among the lender, borrower, and Agency whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan.

Transfer and assumption. The Agency-approved conveyance by a borrower to an assuming borrower of the assets, collateral, and liabilities of the loan in return for the assuming borrower's binding promise to pay the outstanding debt.

Veteran. For the purposes of applicant selection, a veteran is a person who served in the active military, naval, or air service and was discharged or released therefrom under conditions other than dishonorable as defined in 38 U.S.C. 101(2).

5. *Accounting terms.* Accounting terms not otherwise defined in this part shall have the definition ascribed to them under Generally Accepted Accounting Principles (GAAP).

B. Federal Award Information

Type of Awards: Guarantee.

Award Amounts: The maximum, aggregate, loan amount that a borrower may receive is $40 million. For fiscal year 2022, the Agency reserves not less than 19 percent of the funds made available to the Food Supply Chain Guaranteed Loan Program until June 7, 2022 for entities that establish and facilitate the slaughter and initial processing of meat and poultry to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain.

Due Date for Applications: Applications will be accepted until funds are expended.

Anticipated Award Date: Beginning not earlier than February 7, 2022.

Performance Period: None.

Type of Assistance Instrument: Loan note guarantee.

Loan guarantee limits:

(a) *Loan amount.* The total amount of guaranteed loans under this notice to one borrower, including the aggregate amount of guaranteed loans to affiliate entities dependent upon another's operations and generation of revenue for loan repayment, (including the guaranteed and unguaranteed portions, and for subsequent loans the outstanding principal and interest balance of any existing FSC guaranteed loans, and the new loan request) must not exceed $40 million.

(b) *Percentage of guarantee.* The percentage of guarantee will be 90 percent for loans with fixed interest rates on the guaranteed portion of the loan and for which the interest rate does not exceed the current Wall Street Journal prime rate plus 200 basis points. All other loans shall be guaranteed at 80 percent.

C. Eligibility Information

(a) *Eligible borrowers.* Borrowers must meet all the following eligibility requirements. Applications which fail to meet any of these requirements will be deemed ineligible and will not be evaluated further.

(1) A borrower must be a cooperative organization, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other federally recognized tribal group; a public body; or an individual. In addition a borrower must be:

(i) A business engaged in or proposing to engage in aggregating, processing, manufacturing, storing, transporting, wholesaling, or distributing food; or

(ii) A business with existing or proposed contractual, lease, or service agreements with another entity or entities, including affiliated entities, which are engaged or proposing to engage in aggregating, processing, manufacturing, storing, transporting, wholesaling, or distributing food.

(2) A borrower must be a business engaged or proposing to engage in commercial food product project(s) either directly or through contractual, lease or service agreements with another entity or entities including affiliated entities. A commercial food product is a product in regular production that is routinely sold in significant quantities to the general public or industry.

(3) Borrowers engaged or proposing to engage in processing of meat, poultry, processed egg products, and Siluriformes either directly or through contractual, lease or service agreements with another entity or entities including affiliated entities, must comply with the requirements of the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service. Borrowers engaged or proposing to engage in processing of other foods and food ingredients either directly or through contractual, lease or service agreements with another entity or entities including affiliated entities, must comply with the requirements of the Food and Drug Administration. All borrowers must comply with requirements of state, tribal and local governments.

(4) Borrowers, including affiliates of the borrower engaged or proposing to engage in, either directly or through contractual, lease or service agreements with another entity or entities including affiliated entities, beef, pork, chicken, or turkey processing must not hold a market share greater than or equal to the entity that holds the fourth largest share of that market for the species addressed in the application.

(5) Individual borrowers must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. For purposes of this subpart, citizens and residents of the Republic of Palau, the Federated States of Micronesia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands are considered U.S. citizens. Individuals that reside in the United States after being legally admitted for permanent residence must provide a permanent green card as evidence of eligibility.

(6) All applications for assistance will be accepted and processed without regard to the availability of credit from any other source.

(b) *Eligible uses of funds.* Borrowers must demonstrate, to the Agency's satisfaction, that loan funds will remain in the United States and the facility being financed and the uses of the loan funds will support the start-up or expansion of activities in the middle of the food supply chain, particularly the aggregation, processing, manufacturing, storage, transportation, wholesaling, or distribution of food, to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain. Eligible uses of funds include, but are not limited to, the following:

(1) Purchase and development of land, buildings, or infrastructure for public or private commercial enterprises or industrial properties, including expansion or modernization.

(2) Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair the use or value of the property as security for the loan. The term of the lease must be equal to or greater than the term of the loan.

(3) Constructing or equipping facilities for lease to public or private enterprises engaged in commercial or industrial operations. Financing for mixed-use properties, involving both commercial business and residential space, is authorized provided that at least 50 percent of the building's projected revenue will be generated from food supply chain related business uses.

(4) Purchase of machinery and equipment including but not limited to manufacturing systems, information technology systems, and commercially available new technologies that promote worker safety or food safety.

(5) Debt refinancing when it is determined that the project is viable and refinancing is necessary to improve cash flow or obtain appropriate lien positions. Debt being refinanced must be debt of the borrower reflected on its balance sheet. The lender's analysis must document that, except for the refinancing of lines of credit, the debt being refinanced was for an eligible loan purpose under this subpart. Existing lender debt may be included provided that, at the time of application, the loan being refinanced has been active and current for at least the past 12 months (current status cannot be achieved by the lender forgiving the borrower's debt or servicing actions that impact the borrower's repayment schedule), and the lender is providing better rates or terms. Unless the amount to be refinanced is owed directly to the Federal government or is federally guaranteed, no more than 50 percent of loan funds may be used to refinance existing debt.

(6) Takeout of interim financing. Guaranteeing a loan that provides for permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a request for preliminary eligibility review or application that proposes such interim financing prior to closing the interim loan. The borrower must take no action that would have an adverse impact on the environment or limit the range of alternatives to be considered by the Agency during the environmental review process. The Agency will not guarantee takeout of interim financing loans that prevent a meaningful environmental assessment prior to Agency loan approval. Even for projects with interim financing, the Agency cannot approve the loan and issue a Conditional Commitment until the environmental process is complete. The Agency assumes no responsibility or obligation for interim loans.

(7) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided such purchase is required for all their borrowers and is the minimum amount required.

(8) The purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative, the purchase of transferable cooperative stock, the purchase of stock in a

business by employees forming an Employee Stock Ownership Plan or worker cooperative, and loans to a fund that invests primarily in cooperatives in accordance with the provisions of this notice.

(9) Taxable corporate bonds when the bonds will be fully amortized over the life of the bond and comply with all provisions of (i) through (v) below:

(i) The bond holder (lender) retains 7.5 percent of the bond.

(ii) The bonds must be fully secured with collateral.

(iii) The bonds must only provide for a trustee when the trustee is totally under the control of the lender. The bonds must provide no rights to bond holders other than the right to receive the payments due under the bond. For instance, the bonds must not provide for bond holders replacing the trustee or directing the trustee to take servicing actions, such as accelerating the bonds. Convertible bonds are not eligible under this paragraph due to the potential conflict of interest of a lender having an ownership interest in the borrower.

(iv) The bond issuer (borrower) must obtain the services and opinion of an experienced bond counsel who must present a legal opinion stating that the bonds are legal, valid, and binding obligations of the issuer and that the issuer has adhered to all applicable laws.

(v) The bond holder (lender) must purchase all the bonds and comply with all Agency regulations. There must be a bond purchase agreement between the issuer and the bond holder. The bond purchase agreement must contain similar language to what is required to be in a loan agreement in accordance with this notice and must be in form and substance satisfactory to the Agency. The bond holder is responsible for all servicing of the loan (bond), although the bond holder may contract for servicing assistance, including contracting with a trustee who remains under the lender's total control.

(10) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(11) Fees and charges outlined in the Loan Guarantee Limits section, above.

(12) Feasibility studies.

(13) Educational, innovation, and training facilities and equipment and kitchen, business, and other multi-tenant incubator facilities and equipment when not eligible for Rural Housing Service, Community Facilities assistance.

(14) Pollution control and abatement as related to transportation, waste management and other activities related to otherwise eligible projects.

(15) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan.

(c) *Ineligible entities.*

(1) An entity is ineligible if any of the conditions identified in paragraphs (i) through (iv) below apply to the borrower, any owner with more than 20 percent ownership interest in the borrower (does not include passive investors), or any owner with control of the borrower.

(i) There is an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court).

(ii) There is any delinquency on payment of Federal income taxes.

(iii) There is any delinquency on a Federal Debt.

(iv) There is a debarment or suspension from receiving Federal assistance.

(2) An entity is ineligible if it derives more than 15 percent of its annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds or Tribal-authorized gaming proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

(3) An entity is ineligible if it derives income from activities of a prurient sexual nature.

(4) An entity is ineligible if it derives income from illegal drugs, drug paraphernalia, or any other illegal product or activity as defined under Federal statute. A borrower that intends to lease space or enter into a power purchase agreement with a marijuana dispensary is not eligible since the borrower would be receiving income from the marijuana operation which is a violation of federal laws since marijuana is a controlled substance under federal law and subject to federal prosecution under the Controlled Substances Act (21 U.S.C. 801).

(5) An entity is ineligible if it is a charitable or fraternal organization. For purposes of this section, an organization that derives more than 10 percent of its annual gross revenue from tax deductible charitable donations, based on historical financial statements, is considered a charitable organization. Fees for services rendered or that are otherwise ineligible for deduction under the Internal Revenue Code are not considered tax deductible charitable donations.

(6) An entity is ineligible if its lender or any of the lender's officers have an ownership interest in the borrower or is an officer or director of the borrower with management control or where the borrower or any of its officers, directors, stockholders, or other owners have more than a five percent ownership interest in the lender. Any of the lender's directors, stockholders, or other owners that are officers, directors, stockholders, or other owners of the borrower without management control or ownership less than five percent must be recused from any decision-making process associated with the guaranteed loan.

(7) An entity is ineligible if it is a lending institution, investment institution, or insurance company with exception of a fund that invests primarily in cooperatives and funds utilized in New Markets Tax Credit (NMTC) structures.

(d) *Ineligible use of loan funds and ineligible loan purposes include:*

(1) Distribution or payment to an individual or entity that will retain an ownership interest in the borrower or distribution or payment to a beneficiary of the borrower. Distribution or payment to a member of the immediate family of an owner, partner, or stockholder will not be permitted, except for a change in ownership of the business where the selling immediate family member does not retain an ownership interest and the Agency determines the price paid to be reasonable. As this type of transaction is not an arm's length transaction, reasonableness of the price paid will be based upon an appraisal. In situations where there is common ownership or an otherwise closely related company is being paid to do construction or installation work for a borrower, only documented costs associated with construction or installation can be paid with loan proceeds. Documented construction or installation costs may not include any profit or wages to a related person, and all work must be done at cost with no profit built into the cost. This paragraph does not apply to transfers of ownership for Employee Stock Ownership Plans (ESOPs) or worker cooperatives; cooperatives where the cooperative pays the member for product or services; or where member stock is transferred among members of the cooperative.

(2) Guaranteeing lease payments or any lines of credit.

(3) Guaranteeing loans made by other Federal agencies.

(4) Loans on which the interest is excludable from income under current or a successor statute of the Internal Revenue Code. Funds generated through the issuance of tax-exempt obligations shall neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor shall an Agency

guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project that involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part that is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

(5) Guarantees supporting inherently religious activities, such as worship, religious instruction, proselytization, or to pay costs associated with acquisition, construction, or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted.

(6) Research and development projects and projects that involve technology that is not commercially available.

(7) Other than cooperative stock purchase loans and cooperative equity security guarantees, guarantees supporting speculation, arbitrage, or speculative real estate investment.

(8) Any business located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.*

(9) Any business located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(10) Any project that drains, dredges, fills, levels, or otherwise manipulates a wetland or engages in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands. This does not apply to loans for utility lines.

(11) Facilities exempt from Federal inspection in accordance with 9 CFR 303.1(a), specifically Federal Meat Inspection Act custom-exempt facilities. However, these facilities could apply as a new or expanded business seeking to expand their operations to obtain a Federal or equivalent seal of inspection.

(12) Any project involving alcoholic beverages, tobacco, or dietary supplements.

(13) Projects or uses of loan funds that the Agency determines create, directly or indirectly, a conflict of interest.

(e) *Fees and Charges.*

(1) *Routine lender fees.* The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business, and these fees are an eligible use of loan proceeds. The lender must document such routine fees on an Agency approved application form. The lender may charge prepayment penalties and late payment fees that are stipulated in the loan documents, as long as they are reasonable and customary; however, the loan note guarantee will not cover either prepayment penalties or late payment fees.

(2) *Professional services.* Professional services are those rendered by persons generally licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by loan packagers. The borrower may pay fees for professional services needed for planning and developing a project. Such fees are an eligible use of loan proceeds provided that the Agency agrees that the amounts are reasonable and customary. The lender must document these fees on the Agency approved application form.

(f) *Interest rates.*

(1) The interest rate for the guaranteed loan will be negotiated between the lender and the borrower and may be either fixed or variable, or a combination thereof, as long as it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers for loans without guarantees and are subject to Agency review and approval.

(2) A variable interest rate must be a rate that is tied to a published base rate, published in a national or regional financial publication, agreed to by the lender and the Agency. The variable interest rate must be specified in the promissory note and may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly. The lender must incorporate, within the variable rate promissory note at loan closing, the provision for adjustment of payment installments. The lender must fully amortize the outstanding principal balance within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(3) It is permissible to have different interest rates on the guaranteed and unguaranteed portions of the loan.

(4) Any change in the base rate or fixed interest rate between issuance of the conditional commitment and loan closing must be approved in writing by the Agency. Approval of such change must be shown as an amendment to the conditional commitment in accordance with this notice and must be reflected on the Guaranteed Loan Closing Report.

(5) The lender's promissory note must not contain provisions for default or penalty interest nor will default or penalty interest, interest on interest, or late payment fees or charges be paid under the Loan Note Guarantee.

(g) *Loan terms.*

(1) *Term length.* The lender, with Agency concurrence, will establish and justify the guaranteed loan term based on the use of guaranteed loan funds, the useful economic life of the assets being financed and those used as collateral, and the borrower's repayment ability. The maximum term allowable for final guaranteed loan maturity is limited to the justified useful life of the project or assets used as collateral but may not exceed 40 years or limitations in the applicable State statute, whichever is less. State statutory limits on maximum terms do not apply for projects on land under the jurisdiction of federally recognized Tribes.

(2) *Guaranteed loan schedule and repayment.* The lender must structure repayment in consideration of the borrower's cash flow and in accordance with the provisions of this section and the loan agreement. Scheduled guaranteed loan payments shall be made no less frequently than annually. In addition:

(i) Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term.

(ii) Guaranteed loans must require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment.

(3) *Interest only.* If the promissory note provides for an interest-only period, interest must be paid at least annually starting on a date that is no more than one year from the date of the promissory note. The first payment of principal and interest will be scheduled based on the borrower's cash flow and whether the facility is operational and generating adequate income. However, the first principal and interest payment must be scheduled not more than three years after the date of the promissory note and principal and interest payments must be scheduled for repayment at least annually thereafter.

(4) *Due on demand.* There must be no ''due-on-demand'' clauses without cause. Regardless of any ''due-on-demand'' with cause provision in a lender's promissory note, the Agency must concur in any acceleration of the guaranteed loan unless the basis for acceleration is monetary default.

(h) *Capital and equity.* Borrowers are required to have sufficient capital or equity to mitigate the ongoing financial and operational risks of the business. Balance sheet equity will be determined based upon current and projected borrower financial statements. Current and projected financial statements filed with the application are reviewed to determine if it is likely that the balance sheet equity requirement can be met. The following capital and equity requirements must be met at the time of lender's closing of the guaranteed loan. A balance sheet as of loan closing is required and should reflect the new debt and use of proceeds. If there are multiple borrowers, consolidated financial statements should be submitted.

(1) Existing businesses must meet one of the following requirements:

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1, at loan closing;

(ii) Provide 10 percent or more of total eligible project costs in the form of borrower investment of equity or other funds into the project including grants or subordinated debt when subject to a standstill agreement for the life of the loan; or

(iii) Balance sheet equity includes owner-contributed capital of 10 percent or more of total fixed assets (net total fixed assets plus depreciation).

(2) New businesses with sales contract(s) with proceeds in an amount adequate to meet debt service and the term of the sales contract(s) are at least equal to the term of the guaranteed loan, and subject to Agency acceptance of the credit worthiness of the counterparty (entity the borrower is contracting with), the borrower must meet one of the following requirements:

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-balance sheet equity ratio of 9 to 1 at loan closing; or

(ii) Borrower investment of equity or other funds (including grants or subordinated debt when subject to a standstill agreement for the life of the loan) into the project in an amount of 10 percent or more of total eligible project cost.

(3) New businesses with a project involving construction and when the lender will request the loan note guarantee prior to completion of construction must meet one of the following requirements:

(i) A minimum of 25 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 3 to 1, at guaranteed loan closing; or

(ii) Borrower investment of equity or other funds (including grants or subordinated debt when subject to a standstill agreement for the life of the loan) into the project in an amount of 25 percent or more of total eligible project cost.

(4) All other borrowers that are new businesses must meet one of the following requirements:

(i) A minimum of 20 percent balance sheet equity (including subordinated debt when subject to a standstill agreement for the life of the loan), or a maximum debt-to-equity ratio of 4 to 1, at guaranteed loan closing; or

(ii) Borrower investment of equity or other funds (including grants or subordinated debt when subject to a standstill agreement for the life of the loan) into the project in an amount of 25 percent or more of total eligible project cost.

(5) Capital and equity requirements may be increased or reduced by the Agency as follows:

(i) Increases.

(A) The Agency may increase the capital or equity requirement specified under paragraphs (h)(1) through (4) of this section for guaranteed loans the Agency determines carry a higher risk. In determining whether a project or guaranteed loan carries a higher risk, the Agency will consider the current status of the industry, concentration of the industry in the Agency's portfolio, collateral coverage, value of personal or corporate guarantees, cash flow, and contractual relationships with suppliers and buyers; credit rating of the borrower; and the strength of the feasibility study and experience of management. The Agency may also increase the capital or equity requirement for new businesses producing new products to sell into new and emerging markets.

(B) The Agency will increase the capital or equity requirement specified under paragraphs (h)(1) through (4) of this section for all guaranteed loans in excess of $25 million.

(ii) Reductions. The Agency may reduce the minimum equity requirement for an existing business when personal or corporate guarantees are obtained in form and substance satisfactory to the Agency, and all pro forma statements indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt service coverage ratio.

(6) The lender must certify that, as of the date the guaranteed loan was closed, its credit analysis indicated that the borrower had sufficient capital or equity to mitigate the financial and operational risks of the business, and that the borrower met the minimum equity required by the Agency in its conditional commitment, or that the minimum borrower capital contribution toward project costs, as applicable and required by the Agency, was met. A copy of the borrower's loan closing balance sheet must be included with the lender's certification.

CAPITAL EQUITY REQUIREMENTS SUMMARY

Borrower	Borrower must meet one of the following at the time of the closing of the guaranteed loan:		
	Percent balance sheet equity:	Borrower investment as percent of total eligible project cost:	Balance sheet equity includes owner contributed capital as percentage of total fixed assets:
Existing Business	≥10	≥10	≥10
Borrowers that are new businesses with sales contract(s) adequate to meet debt service and the term of the sales contract(s) are at least equal to the term of the guaranteed loan	≥10	≥10	N/A
Borrowers that are new businesses for a project involving construction and the lender will request the loan note guarantee prior to completion of construction	≥25	≥25	N/A
All other borrowers that are new businesses	≥20	≥25	N/A

(i) *Personal, partnership, and corporate guarantees.* The provisions of this section do not apply to passive investors.

(1) Except as provided in paragraph (3) of this section, Agency-approved, unsecured personal, partnership, and corporate guarantees for the full term of the guaranteed loan and at least equal to the guarantor's percent interest or membership in the borrower times the guaranteed loan amount are required from any person or entity owning a 20-percent or greater interest or membership in the borrower. In the event a portion of the borrower's ownership interest stock is sold or transferred, the Agency reserves the right to require personal or corporate guarantees from the new owners of a 20-percent or more interest in the borrower.

(2) When warranted by an Agency assessment of potential financial risk, the Agency may require the following:

(i) Guarantees to be secured;

(ii) Guarantees from any person or entity owning less than a 20 percent interest or membership in the borrower; and

(iii) Guarantees from persons whose ownership interest in the borrower is held indirectly through intermediate or affiliated entities.

(3) Exceptions to the requirement for personal, partnership or corporate guarantees may be requested by the lender. The lender must document, to the Agency's satisfaction, that collateral, equity, cash flow, and profitability indicate an above-average ability of the borrower to repay the loan. The Agency will evaluate these requests on a case-by-case basis.

(4) Each guarantor must execute an Agency-approved guarantee form in addition to any guarantee form required by the lender.

(5) Any amounts paid by the Agency pursuant to a claim by a guaranteed program lender will constitute a Federal debt owed to the Agency by a guarantor of the loan, to the extent of the amount of the guarantor's guarantee.

(j) *Insurance.* The lender is responsible for ensuring that the following required insurance is maintained by the borrower.

(1) *Hazard.* Hazard insurance with a standard clause naming the lender as mortgagee or loss payee, as applicable, is required for the life of the guaranteed loan. The amount must be at least equal to the replacement value of the collateral or the outstanding balance of the loan, whichever is the greater amount.

(2) *Life.* The lender may require a collateral assignment of life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage must be in amounts necessary to provide for management succession or to protect the business. The Agency may require life insurance on key individuals for loans where the lender has not otherwise proposed such coverage. The cost of insurance and its effect on the applicant's working capital must be considered, as well as the amount of existing insurance that could be assigned without requiring additional expense.

(3) *Worker compensation.* Worker compensation insurance is required in accordance with State or Tribal law.

(4) *Flood.* National flood insurance is required in accordance with applicable law.

(5) *Other.* The lender must consider whether public liability, business interruption, malpractice, and other insurance is appropriate to the borrower's particular business and circumstances and must require the borrower to obtain such insurance as is necessary to protect the interests of the borrower, the lender, and the Agency.

(k) *Financial statements.*

Except for audited financial statements, the lender will determine the type and frequency of submission of financial statements by the borrower and any guarantors. All financial information (*e.g.,* financial statements, balance sheets, financial projections, and income statements) must be prepared and submitted in accordance with accounting practices acceptable to the Agency. Such practices can include, but are not limited to, GAAP and the industry's standard accounting practice. The Agency may require annual audited financial statements. Audits will be required of any public body, nonprofit corporation, or Indian Tribe that receives a guaranteed loan that meets the thresholds established by 2 CFR part 200, subpart F. Any audit provided by a public body, nonprofit corporation, or Indian Tribe required by this paragraph will be considered adequate to meet the audit requirements of the FSC program for that year.

(l) *Cooperative stock/cooperative equity.* The cooperative or business entity assisted must be an eligible borrower under this notice and the funds must be used for eligible uses of loan funds under this notice.

(1) *Cooperative stock purchase program.*

(i) The Agency may guarantee loans for the purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity. The cooperative must use the proceeds from the stock sale for eligible uses of loan funds described in Eligible Uses of Funds section, above. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the 5-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative. The full amount of the loan proceeds must be used for the purchase of cooperative stock and cooperative must not reinvest those funds into another entity. The Agency may also guarantee loans for the purchase of transferable stock shares of any type of cooperative. Such stock may provide delivery or some form of participation rights and may only be traded among cooperative members.

(ii) The maximum term allowable for a guaranteed loan's maturity is limited to the justified useful life of the funded project assets the cooperative purchases with the proceeds of the stock sale not to exceed 40 years or applicable State statutory limitations, whichever is less. The maximum term is seven years if the proceeds from the stock sale are used by the cooperative for working capital.

(iii) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default.

(iv) The lender must complete a written credit analysis of the borrower of each stock purchase loan and a complete credit analysis of the cooperative prior to making its first stock purchase loan.

(v) If the borrower is an agricultural producer, the borrower may provide financial information in the manner that is generally required by commercial agricultural lenders.

(vi) The required feasibility study should address the cooperative.

(vii) The Agency will conduct an appropriate environmental assessment on the processing facility and will not process individual applications for the purchase of stock until the environmental assessment on the cooperative processing facility is completed. Typically, an individual loan for the purchase of cooperative stock is considered a categorical exclusion.

(2) *Cooperative equity security guarantees.*

(i) The Agency may guarantee loans for the purchase of preferred stock or similar equity issued by a cooperative

and may guarantee loans to a fund that invests primarily in cooperatives. In either case, the guarantee must significantly benefit one or more entities eligible for assistance under this notice.

(ii) ''Similar equity'' is any special class of equity stock that is available for purchase by non-members and/or members and lacks voting and other governance rights.

(iii) A fund that invests ''primarily'' in cooperatives is determined by its percentage share of investments in and loans to cooperatives. A fund portfolio must have or commit at least 50 percent of its loans and investments in cooperatives to be considered eligible for loan guarantees for the purchase of preferred stock or similar equity.

(iv) The maximum term of a guaranteed loan for preferred stock or similar equity is equal to the least of the following, but will not exceed 40 years:

(A) The justified useful life of the funded project assets;

(B) The maximum term under any applicable State statute;

(C) The specified holding period for redemption as stated by the stock offering; or,

(D) Seven years when the proceeds are used by the cooperative for working capital.

(v) All borrowers purchasing preferred stock or similar equity must provide documentation of the terms of the offering that includes compliance with State and Federal securities laws and financial information about the issuer of the preferred stock to both the lender and the Agency.

(vi) An issuer of preferred stock must be a cooperative organization or a fund and must be able to issue preferred stock to the public that, complies with applicable State and Federal securities laws.

(vii) A fund must use a guaranteed loan under this subpart to, either or both, make loans to cooperatives or to purchase preferred stock that is issued by cooperatives. The cooperative must use the proceeds from the guaranteed loan or stock sale for eligible uses of loan funds described in the Eligible Uses of Funds section, above.

(viii) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a borrower default. When recovering losses from loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from reinvestment of dividends.

(ix) Shares of preferred stock that are purchased with guaranteed loan proceeds cannot be converted to common or voting stock.

(x) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a borrower defaults on a loan financed under the guaranteed loan program, the borrower waives any ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

(xi) Guaranteed loans for the purchase of preferred stock must be prepaid in the event a cooperative or fund that issued the stock exercises an early redemption. If the cooperative enters into bankruptcy, to the extent the cooperative can redeem the preferred stock, the borrower is required to repay the loan from the redemption of the stock.

(3) *Employee ownership succession.*

(i) The Agency may guarantee loans for conversions of businesses to either cooperatives or ESOP within five years from the date of initial transfer of stock.

(ii) The term of the loan shall not exceed 10 years.

(iii) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, the ability to transfer the stock to another party, or the ability to otherwise liquidate and dispose of the collateral in the event of a borrower default. In the event of default, the stock may not be sufficient to satisfy the debt and the borrower is fully liable for the entire debt, regardless of the success or failure of the cooperative or ESOP. The lender must take all action to maximize recovery on the loan, including collection of personal and corporate guarantees. In addition, provisions of the Debt Collection Improvement Act of 1996 may impose significant restrictions on delinquent Federal debtors, including eligibility for other Federal programs.

(iv) The lender must complete a written credit analysis of each stock purchase loan and a complete credit analysis of the cooperative or ESOP prior to making its first stock purchase loan.

(v) If a cooperative is organized, a selling owner becomes a member with special control rights to protect their stake in the business while a succession plan is implemented. At the completion of the stock transfer, selling owners may retain their membership in the cooperative provided that their control rights are the same as all other members. Any special covenants that selling owners may have held must be extinguished upon completion of the transfer.

(vi) If an ESOP is organized for transferring ownership to employees, selling owner(s) may not retain ownership in the business after five years from the date of the initial transfer of stock.

(m) *New Markets Tax Credit (NMTC) program.* The NMTC program is administered by the U.S. Department of the Treasury's (Treasury) Community Development Financial Institutions (CDFI) Fund with NMTC credits allocated to Treasury-certified Community Development Entities (CDEs) across the United States to make Qualified Equity Investments (QEIs) in low-income communities. NMTC related definitions and terms in this section are governed by section 45(D) of the Internal Revenue Code (26 U.S.C. 45D), and applicable Treasury regulations (26 CFR 1.45D–1). A CDE will generally establish a new subsidiary of a CDE (sub-CDE) for individual NMTC projects. Lenders and their borrowers with guaranteed loan projects that include NMTC investments must comply with the provisions in this section. To be a lender for a guaranteed loan project that involves financing under the NMTC provisions, the lending entity must meet the applicable eligibility criteria in § 5001.130. The Agency will not waive its servicing rights to a guaranteed loan or be a party to any forbearance agreement in conjunction with a NMTC project.

(1) *Guaranteed loans directly to Qualified Active Low-Income Community Businesses (QALICB).*

(i) A lender that is CDE or sub-CDE under the direct control of a regulated lender or an approved non-regulated lender does not need to separately meet the requirements of an eligible lender under this notice to make a guaranteed loan directly to a QALICB.

(ii) Subject to the provisions in Section C.(m)(1)(iii) of this notice, a lender that is a CDE or sub-CDE may have an ownership interest in the borrower provided that each condition specified in paragraphs (A) through (C) below is met.

(A) The lender does not have an ownership interest in the borrower prior to the application.

(B) The lender does not take a controlling interest in the borrower.

(C) The lender does not provide equity or take an ownership interest in a borrower at a level that would result

in the lender owning 20 percent or more interest in the borrower.

(iii) Notwithstanding the provisions in Section C.(d)(13) of this notice a lender that is a CDE or sub-CDE taking an ownership interest in the borrower does not constitute a conflict of interest. The Agency will mitigate the potential for a conflict of interest by requiring appropriate loan covenants establishing, at a minimum, limitations on dividends and distributions of earnings in the loan agreement between the lender and borrower. The Agency will also ensure that the lender limits any waivers of loan covenants and future modifications of loan documents in compliance with this part.

(iv) Guaranteed loans made by a lender directly to a QALICB must meet all other program and project eligibility requirements as specified in this notice.

(v) For purposes of calculating borrower equity, the CDE's (or sub-CDE's) amount of the principal balance of the loan from NMTC investor funds that is subordinated to the guaranteed loan may be considered as equity.

(2) *Guaranteed loans to a NMTC leveraged equity structure.* Tax benefits to a NMTC investor are based on the total amount of funds utilized in the project. The tax benefit calculation includes the sum of the investor's cash investment plus loan proceeds from a leveraged lender into a NMTC investor fund entity. The investor fund entity is generally a new entity established to make a QEI into one or more CDEs or sub-CDEs to support a qualified low-income community investment (QLICI) to a QALICB. The investor fund entity, through its investment, has ownership rights in the sub-CDE that will be making secured QLICI loans to the QALICB. Notwithstanding the provisions above in section C.(a), Eligible Borrowers, either a leveraged lender entity lending to an investor fund entity, or an investor fund entity such as an investor partnership or investor limited liability corporation, may be an eligible borrower for a specific NMTC project as specified in paragraph (2)(i) of this section. For purposes of this section only, the stated term ''borrower'' in paragraphs (2)(i) through (xiii) of this section applies to both a leveraged lender entity and an investor fund entity as the guaranteed loan borrower in the NMTC project. Paragraphs (2)(ii) through (xiii) of this section identify modifications to this part that apply when the eligible borrower is a leveraged lender entity or investor fund entity in a NMTC project.

(i) To be an eligible borrower using the leveraged equity structure of a NMTC project each condition identified in paragraphs (2)(i)(A) through (E) of this section must be met.

(A) The investor fund entity must be established for a single specific NMTC investment.

(B) The lender is not an affiliate of the borrower.

(C) When the borrower is a leveraged lender entity it must relend one hundred percent of the guaranteed loan funds to an investor fund entity. In all cases, one hundred percent of the guaranteed loan funds are or will be invested by the investment fund entity in one or more sub-CDEs that will then be loaned directly to a QALICB through a direct tracing method, and such guaranteed loan funds are, or will be, used by the QALICB in accordance with the eligibility requirements in this Notice. The QALICB's project must be the ultimate use of one hundred percent of the guaranteed loan funds.

(D) The QALICB must meet the requirements of an eligible borrower under this notice.

(E) The sub-CDE operating agreement with the QALICB must include a provision that the guaranteed lender has approval rights with respect to any substantial loan servicing actions that may be taken by the sub-CDE regarding the collateral or repayment terms of their QLICI loans to the QALICB.

(ii) The guaranteed loan amount and percentage of guarantee provisions found in the Loan Guarantee Limits section of this notice, apply to the QALICB and to the investor fund entity or leveraged lender entity, who would actually be the borrower as defined under this part.

(iii) For purposes of calculating borrower equity in compliance with this notice, the leveraged lender entity's note from the investor fund may be considered a tangible asset and when the lien associated with the sub-CDE's loan is subordinated, the principal balance of the sub-CDE's loan made to the QALICB from NMTC investor funds may be considered as equity.

(iv) The loan terms of this notice apply to both the borrower and the QALICB. The maturity and related payment schedule of the lender's guaranteed loan to the borrower must be no longer than the maturity and related payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments can be used for a NMTC loan. The lender may require additional principal repayment by a co-borrower, such as an owner or principal participant of the QALICB. Notwithstanding the provisions in Section C.(g)(3), the Agency may consider interest-only payments by a borrower pursuant to an interest-only term not to exceed seven years on a loan made under an NMTC structure if the lender requires:

(A) A debt repayment reserve fund or sinking fund in an amount at least equal to the guaranteed loan's principal amortization that would have otherwise applied to the loan if equally amortized payments were collected during the seven-year term; and

(B) Such reserve funds or sinking funds are applied to the guaranteed loan as an additional payment of principal at the end of such interest-only term.

(v) The credit factors of this notice apply to both the lender's guaranteed loan to the borrower and the sub-CDE's loan to the QALICB. The collateral provisions of this notice apply only to the sub-CDE's loan to the QALICB.

(vi) The personal, partnership and corporate guarantee provisions of this notice apply when the guaranteed loan borrower is a leveraged lender entity in an NMTC project. Guaranteed loans made directly to an investor fund entity as the borrower do not require a personal, partnership, or corporate guarantee from the investor fund entity's owner, who is the NMTC tax credit investor and considered a passive investor. The Agency shall obtain the personal, partnership or corporate guarantee from the QALICB ownership for a guaranteed loan to an investor fund entity, subject to the eligibility requirements of the NMTC program. The Agency may require additional personal, partnership or corporate guarantees if warranted by an Agency evaluation of potential financial risk.

(vii) The insurance provisions of this notice apply only to the QALICB and the sub-CDE's secured loan to the QALICB.

(viii) The financial reporting provisions of this notice apply to both the borrower and the QALICB.

(ix) The application requirements of this notice, as applicable, apply to both the borrower and the QALICB, including the application analysis and evaluation components. The Agency also requires submission of the loan terms and documents between the sub-CDE and QALICB. As part of the application completed by the lender, the documentation must include comparable industry information and a summary of the NMTC project's funding path and an explanation of the relationships between all parties in the NMTC transaction (an accompanying schematic is encouraged for complicated transactions).

(x) The environmental responsibilities specified in this notice apply to the NMTC project.

(xi) For any application that the Agency assigns a priority score, when assigning the priority score to a NMTC loan application, the Agency will score the project based on the entire NMTC structure and the QALICB's project as the ultimate use of guaranteed loan funds.

(xii) The lender is responsible for ensuring that the NMTC project complies with the planning, performing, development and project monitoring provisions of this notice and the lender is also responsible for ensuring the NMTC project complies with all applicable Treasury NMTC requirements.

(xiii) The interest rate and loan term provisions of this notice apply to both the borrower and the QALICB in a NMTC transaction.

D. Application and Submission Information

(a) *Address to Request Application Package.*

(1) Lenders should download the application documents and requirements delineated in this notice from: *https://www.rd.usda.gov/foodsupplychainloans.*

(2) Applications will only be accepted electronically as provided at *https://www.rd.usda.gov/foodsupplychainloans.* Lenders may use an existing Unique Entity Identifier (UEI) (obtained at *https://sam.gov/*) and eAuthentication Customer Account to file an application. To apply electronically:

(i) Obtain and register for a UEI at *https://sam.gov/* as described in Section H.(e)(2) of this notice;

(ii) Create a Level 2 USDA eAuthentication Customer Account at *https://www.eauth.usda.gov/eauth/b/usda/home;* and,

(iii) Request access to apply electronically by emailing a written request with a complete Account and User Creation form (available at *https://www.rd.usda.gov/foodsupplychainloans*) to *rdfoodsupplychainloans@usda.gov.*

(3) An autoreply email message will acknowledge receipt of your request. Please allow at least two business days for its processing. If you do not receive an email message within that timeframe, please check your Spam folder;

(4) Upon approval, a lender's authorized/rightful users will each receive an email from *RD.AdminAppsSupport@usda.gov,* with instructions to access the system.

(b) *Content and Form of Application Submission.*

The lender may complete either a request for preliminary eligibility review or a full application to begin the process for obtaining a guaranteed loan. The Agency encourages, but does not require, lenders to file requests for preliminary eligibility reviews in order to obtain Agency comments before submitting a full application.

(1) *Preliminary eligibility review.*

(i) *Contents.* Except as otherwise indicated, each request for a preliminary eligibility review must contain the material identified in paragraphs (A) and (B) of this section. This information may be submitted in a narrative format or utilizing the lender's preliminary lender's analysis or preliminary credit memo. The borrower's executive summary and feasibility study should be included for a full application under this notice.

The lender will initiate the environmental review process early in the planning stage and should be alert for projects that may have a significant impact on the environment.

(A) Regardless of format, the lenders must provide the following information:

(1) Name of the proposed borrower and co-borrower(s) as applicable, organization type, address, contact person, email address, and telephone number and whether the proposed borrower or co-borrower is a member of a socially disadvantaged group;

(2) Name of the proposed lender, address, telephone number, contact person, email address;

(3) Amount of the guaranteed loan request, the percentage of guarantee requested (if known), the proposed rates and terms of the guaranteed loan, and the source(s) of other funding;

(4) If known, a description of collateral to be offered with estimated value(s), identity of guarantors, and the amount and source of equity, other capital, and matching funds to be contributed to the project; and

(5) A brief description of the project, its location, products, or services provided, service area, and, as applicable, availability of raw materials and supplies, including an explanation of the impact the project will have on increasing capacity and helping create a more resilient, diverse, and secure U.S. food supply chain.

(B) Sufficient information and documentation to enable the Agency to assess borrower, lender, and project eligibility, including summaries or spreadsheets of financial statements or audits, relationships and identity of any affiliates; copies of organizational documents and organizational charts; and existing debt instruments.

(ii) *Assessment.* Based on the information submitted for the preliminary eligibility review, the Agency will make an informal assessment of the types of guarantee funding applicable to the request, and the eligibility of the borrower, project, and lender. The Agency will provide written informal comments. The assessment may change based on subsequently submitted information, is solely advisory in nature, does not obligate the Agency to approve a guarantee request, and is not considered a favorable or adverse decision by the Agency.

(2) *Full Applications.*

The Agency will accept applications on a continuous basis. For each loan guarantee request, the lender must submit to the Agency a complete application as specified in paragraphs (i) through (xv) of this section. Lenders must submit complete applications in order to be considered for loan guarantees. Lenders are encouraged to submit a complete application in a single package; however, the Agency may accept the environmental information required by the Agency and initiate and complete its environmental reviews in advance of receiving a complete application. Materials and information submitted for a preliminary eligibility review do not need to be resubmitted, however, any such materials and information that have been revised or updated must be resubmitted in full. If an application is incomplete, the Agency will notify the lender in writing of the items necessary to address the incomplete application. Upon receipt of a complete application, the Agency will complete its evaluation.

(i) Agency-approved application form.

(ii) Credit evaluation, conforming to Lender's Credit Evaluation at Section D.(c) of this notice.

(iii) Environmental information required by the Agency in accordance with 7 CFR 1970, ''Environmental Policies and Procedures,'' to conduct its environmental reviews.

(iv) Financial statements.

(A) Current Agency-acceptable balance sheet and year-to-date income statements of the borrower, affiliated entities with business relationships, and any guarantor(s) dated within 90 days of submission of the complete application.

(B) Agency-acceptable historical balance sheet, income statements, and cash flow statements of the borrower for the lesser of the last three fiscal years or all years of operation; and

(C) Projected balance sheets, income statements, and cash flow statements or a financial model starting from the current financial statements through a minimum of two years of the project performing at full operational capacity or stable operations. Based on the type

of project or at the discretion of the Agency, financial projections or models may be required from current financial statements up to the end of the term of the guaranteed loan. Financial projections must be supported by a list of assumptions showing the basis for the projections. Projected financial statements must include a pro forma balance sheet projected for guaranteed loan closing.

(D) Operational cash flow projections on a quarterly basis from the current financial statements through start-up or occupancy for projects involving construction when lenders are requesting the loan note guarantee prior to completion of construction.

(E) The Agency may request additional financial statements, financial models, cash flow information, updated financial statements, and other related financial information to determine the financial feasibility of a project and evaluate the credit underwriting of the borrower, its affiliates, and any guarantors.

(v) Identify whether the borrower has a known relationship or association with an Agency employee. If there is a known relationship, identify each Agency employee with whom the borrower has a known relationship.

(vi) Current credit reports or the equivalent on the borrower, any payment guarantors and any person or entity owning greater than a 20 percent or more interest in the borrower or controls the borrower, except for passive investors and those corporations listed on a major stock exchange. A credit report or its equivalent are not required for elected and appointed officials when the borrower is a public body, or Indian Tribe, or for members of a non-profit organization. Credit reports must be submitted to the Agency for all applications for guaranteed loans in the amount of $200,000 or more. For lenders that are submitting smaller requests, the lender must keep the credit report on file with the lender's application.

(vii) Executive Summary. The executive summary must include a description of the business and project; the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship; description of how the project will increase the capacity or make the food supply chain more resilient, diverse, or secure; and address how the borrower or project, as applicable, meet the criteria for priority scoring as described in section E.(c)(4) of this notice.

(viii) Organizational documents.

(ix) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission regulations, a copy of SEC Form 10–K, ''Annual Report Pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.''

(x) Intergovernmental consultation comments in accordance with RD Instruction 1970–I and 2 CFR part 415, subpart C, or successor regulation, unless exemptions have been granted by the State single point of contact. Applications from Federally recognized Indian tribes are not subject to this requirement.

(xi) Borrowers must provide evidence of compliance with applicable authorities. Borrowers engaged in processing of meat, poultry, processed egg products, and Siluriformes must comply with the requirements of the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service. Borrowers engaged in processing of other foods and food ingredients must comply with the requirements of the Food and Drug Administration. All borrowers must also be in compliance with requirements of state and local governments.

(xii) At the time of the loan application, the lender must submit its loan classification and credit risk rating classification scale.

(xiii) A feasibility study of the proposed project, by a qualified consultant, is required. At a minimum, a feasibility study must include an evaluation of the economic, market, technical, financial, and management feasibility and an executive summary that reaches an overall conclusion as to the business' chance of success. The feasibility study must consider the borrower's management experience; sources of capital; products, services, and pricing; marketing plan; proposed use of loan funds; availability and access to labor, raw materials including animals and product, and supplies; availability or access to necessary infrastructure including water and waste disposal; worker and food safety plans; contracts in place; and distribution channels. The feasibility study should address and quantify how the project will increase capacity or make the food supply chain more resilient, diverse, or secure. For proposed financing activities involving beef, pork, chicken, or turkey processing, corroborate that the borrower meets the borrower eligibility provisions and self-certify that the borrowers, their affiliated entities, and entities providing processing services through contractual, lease or service agreements with the borrower, do not at the time of application hold a market share greater than or equal to the entity that holds the fourth largest share of the market for the species subject to the proposed financing.

(xiv) Appraisals of collateral are required as set forth in this section. The lender is responsible for ensuring that appraisal values adequately reflect the actual value of the collateral based on an arm's length transaction. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the lender must submit an estimated appraised value. Prior to the issuance of the loan note guarantee, the estimated value must be supported with an appraisal acceptable to the agency.

(A) *Newly-acquired chattel.* A bill of sale may be submitted to support the value of newly-acquired chattel.

(B) *Existing chattel.* The lender must obtain appraisal(s) for existing chattel collateral when its value exceeds $250,000.

(C) *Real estate.* The lender must obtain appraisals for real estate collateral when the value of the collateral exceeds $500,000 or the current limitation established under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Public Law 101–73, 103 Stat. 183 (1989). Real estate and chattels with a value below these thresholds must be evaluated in accordance with the lender's primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, in accordance with normal banking practices and generally accepted methods of determining value.

(D) *Construction Project.* For construction projects, the lender must:

(1) Obtain the ''As Is'' market value and the ''prospective'' market value as of the date of construction completion to determine the value of the real estate property, or

(2) Obtain an income-based appraisal as of the date of completion to determine the value of revenues to be generated by the real estate.

(E) *Appraisal standards.*

(1) Each real estate appraisal must be conducted by an independent qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) or successor standards. All real estate appraisals must meet the requirements contained in the FIRREA, and the appropriate guidelines contained in Standards 1 and 2 of the USPAP and be performed by a State Certified General Appraiser licensed in the state in which the real estate is located.

(2) Chattel appraisals must be conducted by an independent qualified appraiser and must be based on industry

recognized standards and reflect the age, condition, and remaining useful life of the equipment.

(F) *Interagency appraisal and evaluations guidelines.* Notwithstanding any exemption that may exist for transactions guaranteed by a Federal Government agency, all appraisals obtained by the lender under this part must conform to the interagency appraisal and evaluations guidelines established by the lender's primary Federal or State regulator, if applicable.

(G) *Environmental considerations.* When the Agency will take a lien on real property, the real estate appraisals must include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral, as determined in accordance with the appropriate American Society for Testing and Materials (ASTM) International Real Estate Assessment and Management environmental standards.

(H) *Appraisal review report.* The lender must submit its complete technical review of the appraisal in an appraisal review report prepared in compliance with USPAP Standards 3 and 4 to the Agency before guaranteed loan closing.

(1) Appraisals must not be more than one year old. However, the Agency may request a more recent appraisal in order to reflect more current market conditions.

(2) The lender must provide documentation demonstrating that, in addition to the other requirements of this section pertaining to appraisers, the appraiser has the necessary experience and competency to appraise collateral.

(I) *Appraisal fees.* Unless otherwise stated in this part, appraisal fees or any other associated costs will not be paid by the Agency.

(xv) Any additional information required by the Agency to complete its evaluation.

(c) *Lender's Credit Evaluation*

The lender is responsible for originating a guaranteed loan in accordance with the requirements of this notice and in accordance with its internal origination policies and procedures to the extent they do not conflict with the requirements of this part. For each application, the lender must prepare a credit evaluation that is consistent with Agency standards found in this notice. The Agency reserves the right to review the lender's credit evaluation and request additional information. Lender approval does not constitute Agency approval.

(1) *Lender's evaluation guidelines.* The lender must conduct a credit evaluation using credit documentation procedures and underwriting processes that are consistent with generally accepted prudent lending practices for commercial, public and project financing, and are also consistent with the lender's own policies, procedures, and lending practices. The underwriting process must include a review of each loan for which a loan guarantee is being sought under this notice. Applications involving affiliated entities must include a global credit evaluation and if applicable a global historical and projected debt service coverage analysis. The analysis should evaluate the relationships between all associated parties to determine potential risks which may affect the borrower and its ability to repay the loan. Entities which may have an impact on the borrower or significantly contribute to the repayment ability of the loan should provide financials for global analysis. Applications involving guarantor(s) must also include a global debt service coverage analysis of the guarantor(s) including the cash flow of the guarantor(s). In addition, the lender must review all applicable contracts, management agreements, and leases to determine they will not adversely affect either the borrower's repayment ability or the value of the collateral securing the guaranteed loan. The lender's evaluation must address any financial or other credit weaknesses of the borrower and project and discuss risk mitigation requirements imposed by the lender.

(2) *Content.* The credit evaluation must be sufficiently detailed to describe the proposed loan, business and project structures and document that the proposed loan is feasible. The credit evaluation must include:

(i) A written evaluation of each credit factor listed in paragraphs (3)(i) through (v) of this section and any additional factors as appropriate;

(ii) A written evaluation of the feasibility study, executive summary, technical report, and engineering and architectural reports, as applicable;

(iii) Spreadsheets and analysis of the financial statements provided in accordance with the Application and Submission Information, with appropriate ratios and comparisons with industry standards (such as Dun & Bradstreet or the Risk Management Association). The spreadsheets should enable a reviewer to easily scan the data, spot trends, and make comparisons. The analysis should include comments on the business' performance trends comparison to the industry averages and steps or proposals the borrower has taken to address any financial or industry weakness;

(iv) Analysis of any financial projections deviating from historical financial performance and such projections must be substantiated and documented;

(v) Analysis of projected operational cash flow on a quarterly basis for borrowers with seasonal cyclical cash flow; and

(vi) Analysis of operational cash flow on a quarterly basis from the current financial statements through start-up or occupancy for projects involving construction when lenders are requesting the loan note guarantee be issued prior to completion of construction. The analysis should address the borrower's construction schedule and address their projected cash flow needs as the project is being completed. The cash flow analysis must indicate whether this cash flow is being provided by the guaranteed loan, borrower equity, or other sources.

(3) *Credit factors.* In performing its credit evaluation, the lender must analyze all credit factors associated with each proposed guaranteed loan and apply its professional judgment to determine that the credit factors and guaranteed loan terms and conditions, considered in combination, ensure guaranteed loan repayment. Credit factors to be analyzed include, but are not necessarily limited to, those areas identified and defined in paragraphs (3)(i) through (v) of this section.

(i) *Character.* Those qualities that generally impel the borrower to meet its obligations as demonstrated by its credit history, including project and borrower debt structure and debt repayment ability. When applicable, an evaluation may include the character of persons with management control or a 20 percent or more ownership interest in the borrower. When the borrower's credit history or character is negative, the lender will provide the basis for the resolution of any issue and why it is unlikely to impact future financial results. The ownership or membership structure of the project and borrower (including membership, sponsors, other equity investors), and the historical performance and experience of ownership and management specific to the project and industry. The historical performance and experience of any entities providing management or administrative services pursuant to contract should also be evaluated.

(ii) *Capacity.* A borrower's ability to produce sufficient cash to repay the guaranteed loan as agreed, including the feasibility and likelihood of the project and borrower to produce sufficient

revenues to service the project's debt obligations over the life of the guaranteed loan and, when applicable, result in sufficient returns to investors to ensure successful repayment of the guaranteed loan. The lender shall address any economic safeguards of the project, including capital expenditure budgeting or reserve funds and other contingency reserve funds such as maintenance reserve funds or debt service reserve funds, intended to protect and safeguard the Agency and lender in the event of default. The lender must make all efforts to:

(A) Ensure that the borrower has adequate working capital, operating capital and reserves for capital expenditures, debt service, and maintenance as applicable; and

(B) Structure or restructure debt so the borrower has adequate debt coverage, documenting as applicable the necessity of any debt refinancing. The evaluation will be supported by a cash flow analysis.

(iii) *Capital.* The borrower must have the resources to adequately capitalize the project and demonstrate the ability to generate and maintain sufficient cash flow for its operations. The extent to which project costs are funded by the borrower in relation to project costs funded by the guaranteed loan or other Federal and non-Federal governmental assistance such as grants, tax credits, or other loans must be analyzed.

(iv) *Collateral.* This criterion refers to the security pledged for the guaranteed loan. The lender is responsible for obtaining and maintaining proper and adequate collateral for the guaranteed loan. All collateral must secure the entire guaranteed loan. The lender is prohibited from taking separate collateral for the guaranteed and unguaranteed portions of the guaranteed loan or requiring compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the guaranteed loan. Collateral can include but is not limited to: General obligation bonds; revenue bonds; pledges of taxes or assessments; assignments of facility revenue and byproduct revenue, as well as other assets such as land, easements, rights-of-way, water rights, buildings, machinery, equipment, inventory; and accounts receivable, other accounts, contracts, cash, assignments of leases and leasehold interests. Intangible assets may serve as collateral, provided they do not serve as primary collateral and are no more than 25 percent of the overall collateral package being pledged as security for the guaranteed loan. For purposes of determining compliance with this requirement, leasehold improvements such as buildings and other structures on leased property are considered tangible assets and can serve as primary collateral. It is the lender's responsibility to obtain, document, file, record and take all actions necessary to properly perfect and maintain adequate collateral to protect the interests of the lender and the Agency.

(A) The lender must determine the market value of collateral as established by an appraisal in accordance with Section D.(b)(2)(xiv) of this notice.

(B) The lender should discount collateral consistent with sound loan-to-discounted value practices which must be adequate to secure the guaranteed loan in accordance with this section. To assess collateral adequacy and appropriate levels of discounting, the lender should consider the type, quality, location, marketability, and alternative uses of the collateral and the basis for the valuation of the collateral, *e.g.,* collateral valued on a cost or replacement valuation, market or comparable sales valuation may require variance of discount factors. The lender must provide satisfactory justification of the discounts being used.

(v) *Conditions.* This factor refers to the general business environment, including the regulatory environment affecting the business or industry, and status of the borrower's industry. Consideration will be given to items listed below and, when applicable, the lender should submit supporting documentation (*e.g.,* feasibility study, market study, preliminary architectural or engineering reports, etc.):

(A) Availability and depth of resource or feedstock market, strength and duration of purchase agreements and availability of substitutes;

(B) Analysis of current and future market potential, off-take agreements, competition, and type of project (service, product, or commodity based);

(C) Energy infrastructure, availability and dependability, transportation and other infrastructure, and environmental considerations;

(D) Technical feasibility including demonstrated performance of the technology and integrated processing equipment and systems, system performance guarantees by the developer, and availability of technology performance insurance;

(E) Complexity of construction and completion, terms of construction contracts and experience and financial strength of the construction contractor or engineering, procurement and construction (EPC) contractor;

(F) Contracts and intellectual property rights, licenses, permits, and state and local regulations;

(G) Creditworthiness of any counterparties, as applicable;

(H) Industry-related public policy issues; and

(I) Other criteria that the lender or Agency deems relevant to the project.

(d) *Intergovernmental Review.*

Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments, including, a county, municipality, town, township, village, or other unit of general government, including tribal governments, below the State level. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain an SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If your State has an SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided as part of your application. Applications from Federally recognized Indian tribes are not subject to this requirement.

E. Application Review Information

(a) *General.* The Agency will evaluate all applications according to the provisions of this part and may require the lender to obtain additional assistance in those areas where the lender does not have the necessary expertise to originate or service the guaranteed loan.

(b) *Evaluation and eligibility determinations.* The Agency will review each complete application to make a formal determination as to the eligibility of the borrower, lender, project, and guaranteed loan purpose and proposed use of funds; whether there is a reasonable assurance of repayment ability; whether sufficient collateral and equity exists; whether the proposed guaranteed loan complies with all applicable statutes and regulations; and whether the environmental review is complete.

(1) If the Agency's evaluation and determination in accordance with this paragraph (b) is favorable, the Agency will proceed in accordance with paragraph (c) of this section.

(2) If the Agency's evaluation and determination in accordance with this paragraph (b) is unfavorable, the Agency will notify the lender, in writing, identifying the reason(s) for determining ineligibility and any applicable appeal or review rights. No further processing of the application will occur. If the

Agency determines it is unable to guarantee the loan, it will inform the lender in writing.

(c) *FSC guaranteed loan priority scoring*

(1) The Agency will consider applications in the order they are received by the Agency; however, for the purpose of assigning priority points as described in this paragraph, the Agency will compare an application to other pending applications that are competing for funding.

(2) When applications on hand otherwise have equal priority, the Agency will give preference to applications for guaranteed loans from qualified veterans.

(3) The Agency will consider applications as they are submitted. If available funding is less than what is requested by applications under consideration, the Agency will score each eligible application based on the point system described below.

(4) A maximum of 115 points can be awarded in the following categories:

(i) Applicants receive 8 priority points if the project is located in or serving one of the top 10% of counties or county equivalents based upon county risk score as listed in the COVID–19 Economic Risk Assessment Dashboard and according to guidance at *https://www.rd.usda.gov/priority-points.*

(ii) Applicants receive 8 priority points if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index and according to guidance at *https://www.rd.usda.gov/priority-points.*

(iii) Applicants will receive 8 priority points for either (A) or (B), according to guidance at *https://www.rd.usda.gov/priority-points.*

(A) Applicants will receive points if the project is located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks more than 80 on the Distressed Communities Index.

(B) Applicants will receive points by demonstrating through written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

(iv) Applicants will receive 5 priority points if the project is located in a city or county with a current unemployment rate, as determined by the Department of Labor, of 125 percent of the State-wide rate or greater. Or, for projects located in certain territories that may not have unemployment rates by localities, the applicant will receive priority points if the applicant's proposed service area has an unemployment rate exceeding 125 percent of the national unemployment rate as determined by the Bureau of Labor Statistics. The national unemployment rate may be found at *https://www.bls.gov/cps.*

(v) Applicants will receive 5 priority points if the project is located within the boundaries of a federally recognized Indian Tribe's reservation, within Tribal trust lands, or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.

(vi) Applicants will receive 20 priority points if the industry is not already present in the local community.

(vii) Applicants will receive 21 priority points if the business is locally owned and managed. (The primary residence of the applicant must be located within the normal commuting area of the guaranteed loan project.)

(viii) Applicants will receive 15 priority points if the project creates or saves a minimum of five permanent jobs with an average wage exceeding 200 percent of the Federal minimum wage.

(ix) Applicants will receive 10 priority points if the business offers a healthcare benefits package to all employees and pays at least 50 percent of the healthcare premium.

(x) Applicants receive 15 priority points if the borrower ensures and certifies to the lender that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with guaranteed loan funds under this Notice are paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141 through 3144, 3146, and 3147 of title 40, U.S.C. Loans guaranteed under this Notice for applicants that receive such priority points are further subject to the relevant regulations contained in 29 CFR part 5.

F. Federal Award Administration Information

(a) *Conditional commitment*

(1) *Approval.* Upon approval of a loan guarantee the Agency will issue a ''Conditional Commitment'' to the lender, containing conditions under which a loan note guarantee will be issued. No conditional commitment can be issued until the loan is obligated. If a loan note guarantee is not issued by the conditional commitment expiration date, the conditional commitment may be extended at the request of the lender pending approval of the Agency and only if there has been no material adverse change in the borrower or the borrower's financial condition since issuance of the conditional commitment. If the conditional commitment is not accepted, the conditional commitment may be withdrawn, and funds may be de-obligated in accordance with F.(a)(4) of this notice. Likewise, if the conditional commitment expires, funds may be de-obligated in accordance with section F.(a)(5) of this notice.

(i) Upon acceptance of the conditional commitment, the lender agrees not to modify the scope of the project, overall facility concept, project purpose, use of guaranteed loan funds, or other terms and conditions without Agency written concurrence in accordance with section F.(a)(5) of this notice.

(ii) If the lender decides at any time after receiving a conditional commitment that it no longer wants a loan guarantee, the lender must immediately advise the Agency of the cancellation in writing. Upon written notification from the lender, the Agency will de-obligate the funds associated with the conditional commitment.

(2) *Content.* The conditional commitment will contain the terms required for issuing a loan note guarantee, including but not limited to:

(i) Approved use of guaranteed loan funds and all project funds (sources and uses of funds);

(ii) Rates and terms of the loan;

(iii) Loan agreement terms including, but not limited to:

(A) Repayment terms and amortization provisions of the guaranteed loan;

(B) Description of real property collateral, list of other collateral and identification of the lender's lien priority in the collateral;

(C) Identification of persons and entities guaranteeing payment of the guaranteed loan and their percentage of guarantee;

(D) Type and frequency of the financial statements to be provided by the borrower and guarantor during the term of the guaranteed loan (guarantor statements must be updated at least annually);

(E) Prohibition against borrower assuming liabilities or obligations of others;

(F) Limitations on borrower dividend payments and compensation of officers, owners, and members of borrower;

(G) Limitations on the purchase and sale of equipment and other fixed assets;

(H) Restrictions on mergers, consolidations, or sales of the business, project, or guaranteed loan collateral without the concurrence of the lender;

(I) Limitations on significant management changes without the concurrence of the lender;

(J) Maximum debt-to-net worth ratio or other test for leverage as required by lender;

(K) Minimum debt service coverage ratio or other cash coverage test as required by the lender;

(L) Requirements imposed by the Agency in its conditional commitment;

(M) Agency environmental requirements;

(N) Requirement for the lender and the Agency to have reasonable access to the project including access for periodic inspections of the project by a representative of the lender or the Agency; and

(O) Requirement for the borrower to provide the lender and the Agency performance information during the term of the guaranteed loan.

(iv) Loan closing requirements;

(v) Lender and borrower certifications;

(vi) Collateral and lien position requirements; and

(vii) Other requirements necessary to protect the Agency.

(3) *Change requests.* The lender can request, in writing, changes to the conditional commitment with justification. The Agency can deny, solely at its discretion, changes to the conditional commitment even if the changes are otherwise in compliance with this part. All changes to the conditional commitment must be documented by written amendment to the conditional commitment executed by all parties.

(4) *Acceptance or withdrawal of conditional commitment.* The lender and borrower must complete and sign the conditional commitment and return a copy to the Agency within 60 days. If the conditional commitment is not accepted by both the lender and borrower within 60 days, the conditional commitment becomes null and void and the Agency will withdraw the conditional commitment and de-obligate the associated funds.

(5) *Modification, and expiration of conditional commitment.* The conditional commitment issued by the Agency will be effective for a period of one year or sufficient time to complete the guaranteed loan project prior to loan closing. The lender must submit a written request to the Agency to extend the conditional commitment at least 30 days prior to its expiration date and obtain Agency approval for the extension. The Agency will consider this request only if no material adverse changes in the borrower or the borrower's financial condition have occurred since issuance of the conditional commitment. If a conditional commitment expires, the Agency will notify the lender in writing and may de-obligate the funds. Any additions or modifications to conditions stated in the original conditional commitment must be agreed upon between the lender, the borrower, and the Agency.

(b) *Changes prior to loan closing.*

(1) *Change in borrower prior to closing.* Any change in borrower ownership or organization prior to the issuance of the loan note guarantee must meet the applicable guaranteed program's eligibility requirements and must be approved by the Agency.

(2) *Transfer to new lender prior to issuance of the loan note guarantee.* Prior to issuance of the loan note guarantee, a lender can request a transfer of an outstanding conditional commitment to a new lender by providing the Agency with a letter from the lender, the borrower, and the proposed new lender. The request must include the reason(s) the current lender no longer desires to be the lender for the project.

(i) The Agency may approve the transfer from the current lender to the proposed new lender provided the new proposed lender is an eligible lender (see H.(e)(1) and (2) of this notice) and no material adverse changes have occurred in the:

(A) Ownership, control, or legal structure of the borrower; and

(B) Borrower's written plan, scope of work, or the purpose or intent of the project.

(ii) The Agency will determine if the proposed new lender is eligible in accordance with this notice prior to approving the transfer of lender. The new lender must execute a new application form and a lender's agreement (unless the new lender already has a valid lender's agreement with the Agency) and must complete a new credit evaluation in accordance with this notice. The Agency may require the new lender to provide other updated application items as specified by the Agency.

(iii) If the Agency approves the transfer to the new lender, the Agency will issue a letter of amendment to the original conditional commitment reflecting the new lender who must acknowledge acceptance of the amended conditional commitment in writing.

(c) *Loan closing and conditions precedent to issuance of loan note guarantee.*

(1) The lender must not close the guaranteed loan until all conditions of the conditional commitment are met. The lender will provide the Agency a draft of the loan agreement for pre-closing review and may provide the Agency draft loan documents for the Agency's concurrence that all conditions of the conditional commitment are met or will be met.

(2) Simultaneously with or immediately after the guaranteed loan closing, the lender must provide to the Agency the following forms and documents:

(i) An executed lenders agreement, unless a lenders agreement executed under this notice was previously submitted to the Agency;

(ii) An Agency-approved, ''Guaranteed Loan Closing Report'';

(iii) A copy of each executed promissory note and collateral security documents;

(iv) A copy of the executed final loan agreement, which must include any additional requirements imposed by the Agency in the conditional commitment;

(v) The original, executed Agency-approved guarantee form(s) for any required personal, partnership or corporate guarantees;

(vi) The borrower's loan closing balance sheet, if required;

(vii) For loans to public bodies, an opinion from recognized bond counsel regarding the adequacy of the preparation, issuance, and enforceability of the debt instruments;

(viii) Any other documents required to comply with applicable law or required by this part, the conditional commitment, or the Agency; and

(ix) When requesting issuance of a loan note guarantee, the lender must certify to each condition identified in paragraphs (c)(2)(ix)(D)(*1*) through (*23*) of this section, as applicable.

(A) In making its certification, the lender can rely on certain written materials (*e.g.,* certifications, evaluations, appraisals, financial statements, and other reports) provided by the borrower or other qualified third parties (*e.g.,* independent engineers, appraisers, accountants, attorneys, consultants, or other experts).

(B) If the lender is unable to provide any of the certifications required under this section, the lender must provide an explanation satisfactory to the Agency.

(C) The lender must certify, in accordance with this notice that the capital/equity requirement was determined, based on a balance sheet prepared in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced. A copy of the loan closing balance sheet must be included with the lender's certification;

(D) The lender may request the loan note guarantee be issued prior to construction in accordance with this notice; however, the lender must still certify to all applicable conditions of this notice and the following:

(1) All requirements of the conditional commitment have been met; and

(2) The financial criteria specified in this notice and any financial criteria contained in the conditional commitment were:

(i) Determined in accordance with any applicable requirements in this notice; and

(ii) Have been maintained through the issuance of the loan note guarantee. Failure to maintain or attain the minimum financial criteria will result in the Agency not issuing a loan note guarantee;

(3) The capital/equity requirement was determined, based on a balance sheet prepared in accordance with GAAP, and met, as of the date the guaranteed loan was closed, giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced. A copy of the loan closing balance sheet must be included with the lender's certification;

(4) No major changes have been made in the applicant, project or lender's loan conditions or requirements since the issuance of the conditional commitment, unless such changes have been approved by the Agency;

(5) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower during the period of time from the Agency's issuance of the conditional commitment to issuance of the loan note guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control;

(6) The borrower is a legal entity in good standing with its regulator (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the borrower was organized or has a place of business;

(7) The borrower meets the eligibility requirements as outlined in this notice.

(8) There is a reasonable prospect that the guaranteed loan and other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application;

(9) The guaranteed loan has been properly closed, and the required security instruments have been properly executed and all security interests obtained by the lender have been or will be properly perfected in accordance with applicable law;

(10) All planned property acquisition has been or will be completed; all development has been or will be substantially completed in accordance with plans and specifications and conforms to applicable Federal, Tribal, State, and local codes; all equipment required for the project is available, can be procured and delivered within the project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements; and costs have not exceeded the amount approved by the lender and the Agency;

(11) The proposed project complies with all current Federal, Tribal, State, and local laws and regulatory rules that affect the project, the borrower, or lender activities, including, but not limited to, equal opportunity and Fair Housing Act requirements and design and construction requirements;

(12) All lender-required insurance policies are in effect at the required levels;

(13) All truth-in-lending and equal credit opportunity requirements have been met;

(14) The borrower has marketable title to the collateral then owned by the borrower, subject to the rights of the guaranteed loan and to any other exceptions approved in writing by the Agency;

(15) Where required, necessary or prudent, the borrower has obtained:

(i) A legal opinion relative to the title and accessibility to any rights-of-way and easements; and

(ii) A title opinion or title insurance showing the borrower has good and marketable title to the real property and other collateral and fully addressing all existing mortgages or other lien defects, restrictions or encumbrances. In those cases where there is adequate gap coverage, a title commitment may be acceptable;

(16) All project funds have been or will be disbursed for purposes and in amounts consistent with the conditional commitment (or Agency-approved amendment thereof) and the application submitted to the Agency. Appropriate lender controls were used to ensure that all funds were properly disbursed, including funds for working capital. A copy of a settlement statement by the lender detailing the use of loan and matching/equity funds must be attached to support this certification;

(17) When applicable, the entire amount of the loan for working capital or initial operating expenses have been disbursed to the borrower, except in cases where the Agency has approved disbursement over an extended period of time and funds are escrowed so that the settlement statement reflects the full amount to be disbursed;

(18) When required, personal and/or corporate guarantees have been obtained in accordance with this notice;

(19) Lien priorities are consistent with the requirements of the conditional commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, materialmen, or other parties have been filed against the collateral and no suits are pending or threatened that would adversely affect the collateral;

(20) Neither the lender nor any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender;

(21) The loan agreement includes all borrower compliance measures identified in the Agency's environmental review for avoiding or reducing adverse environmental impacts of the project's construction or operation;

(22) The lender will comply with the requirements of the Debt Collection Improvement Act; and

(23) The lender has executed and delivered the lender's agreement, completed registration in the Agency's electronic reporting system, and electronically submitted the closing report for the guaranteed loan.

(d) *Issuance of the loan note guarantee.*

(1) *Issuance.* The Agency, at its sole discretion, will determine if the conditions specified in the conditional commitment have been met and whether to issue the loan note guarantee. When the Agency is satisfied that all the conditions specified in the conditional commitment have been met and it receives all the required fees plus the executed lender's agreement from the lender, the Agency will issue the documents identified in paragraphs (d)(1)(i) through (iii) of this section, as appropriate.

(i) *Loan note guarantee.* The Agency will provide the lender the original loan note guarantee document which the lender must attach to the promissory note. If the lender elected to use the multi-note system, the Agency will issue one loan note guarantee for the set of promissory notes.

(ii) *Assignment guarantee agreement.* If the lender assigns any guaranteed portion of a guaranteed loan to a holder, the lender, holder, and the Agency will execute an assignment guarantee

agreement for each assignment. The lender must fully disburse loan funds of a promissory note for the approved purposes of the loan, prior to assigning the guaranteed portion of a note to a holder and issuance of the Assignment of Guarantee Agreement. Disbursement to an escrow account does not meet this requirement, except for loan funds for working capital.

(iii) *Certificate of incumbency and signature.* The Agency will provide the holder an executed certificate of incumbency form to verify the signature and title of the Agency official who signed the Loan Note Guarantee and the assignment guarantee agreement.

(2) *Agency review of closing.* The Agency will review the closing documents submitted by the lender for completeness and if all conditions have been met and all documents have been provided, the Agency will issue the loan note guarantee. If the Agency determines that it cannot issue the loan note guarantee, the Agency will notify the lender, in writing, of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the Agency will issue the loan note guarantee.

(3) *Cancellation of obligation.* A lender can submit a written request to the Agency for a partial cancellation. The lender must include in this request the reason for the partial cancellation, the effective date, and the portion to be canceled. If the Agency conditions for issuance of the loan note guarantee are rejected, cannot be met, or funds are, in whole or in part, no longer needed, the Agency will cancel the obligation.

(e) *Replacement of loan note guarantee and assignment guarantee agreement.*

If a loan note guarantee or assignment guarantee agreement has been lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the Agency may issue a replacement to the lender or holder, as applicable under the conditions described in (1) and (2) of this paragraph. The lender is prohibited from altering or modifying or approving any alterations to or modifications of any loan documents without the prior written approval of the Agency.

(1) Replacement requirements. The lender must coordinate the activities of the party who seeks the replacement documents and must submit the required documents to the Agency for processing. A written statement of loss must be provided. The statement of loss must include:

(i) Legal name and present address of either the lender or the holder who is requesting the replacement forms;

(ii) Legal name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the loan note guarantee or assignment guarantee agreement including the name of the borrower, the Agency's case number, date of the loan note guarantee or assignment guarantee agreement, face amount of the promissory note in which an interest was purchased, date of the promissory note, present balance of the guaranteed loan, percentage of guarantee, and, if an assignment guarantee agreement, the original named holder and the percentage of the guaranteed portion of the guaranteed loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the loan note guarantee or assignment guarantee agreement; and

(vi) For the holder, evidence demonstrating current ownership of the assignment guarantee agreement. If the present holder is not the same as the original holder, the lender must include a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder. If copies of the endorsement cannot be obtained, the lender must submit the best available records of transfer (*e.g.,* order confirmation, canceled checks, etc.).

(2) Indemnity bond. An indemnity bond acceptable to the Agency must accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or territory, the District of Columbia or an Indian Tribe. The indemnity bond must:

(i) Be issued by a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570, except when the outstanding principal balance and accrued interest due the present holder is less than $1 million as verified by the lender via a written letter of certification of balance due;

(ii) Be issued and payable to the United States of America acting through the Agency;

(iii) Be in an amount not less than the unpaid principal and interest; and

(iv) Hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reason of the loss or replacement of the instruments.

(f) *Other Federal, Tribal, State, and local requirements.*

Beginning on the date of issuance of the loan note guarantee, lenders and borrowers must:

(1) Coordinate with all appropriate Federal, Tribal, State and local agencies that may have jurisdiction or involvement in each project; and

(2) Comply with all current Federal, Tribal, State and local laws and rules, as well as applicable regulatory commission rules, that affect the project, borrower, or lender. Compliance activities include, but are not limited to:

(i) Organization and borrower's authority to design, construct, develop, operate, and maintain the proposed facilities;

(ii) Borrowers engaged in processing of meat, poultry, processed egg products, and Siluriformes must comply with the requirements of the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service. Borrowers engaged in processing of other foods and food ingredients must comply with the requirements of the Food and Drug Administration;

(iii) Borrowing money, giving security, and raising revenues for repayment;

(iv) Land use zoning;

(v) Health, safety, and sanitation standards as well as design and installation standards; and

(vi) Protection of the environment and consumer affairs.

(g) *Planning and performing development.*

In complying with the requirements of this section, the lender may rely on written materials and other reports provided by an independent engineer and other qualified consultants.

(1) *Design requirements.* The lender must ensure that all facilities constructed with guaranteed loan funds are:

(i) Designed using accepted architectural, engineering, and design practices, taking into consideration any Agency comments when the facility is being designed;

(ii) Designed in conformance with applicable Federal, Tribal, State, and local codes and requirements; and

(iii) Constructed to support operations at the level and quality contemplated by the borrower using accepted architectural and engineering practices.

(2) *Rights-of-ways, easements, and property rights.* The lender is responsible for ensuring that the borrower has:

(i) Obtained valid, continuous, and adequate rights-of-way and easements

needed for the construction, operation, and maintenance of a project; and

(ii) Obtained and recorded such releases, consents, or subordinations to such property rights from lienholders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the project and to provide the required security.

(3) *Permits, agreements, and licenses.* It is the lender's responsibility to ensure the borrower obtains all permits, agreements, and licenses that are applicable to the project.

(4) *Insurance.* It is the lender's responsibility to ensure the borrower obtains and maintains borrower and project insurance in substance and amount similar to that ordinarily required by lenders in the industry.

(5) Construction monitoring requirements. The lender, or its designated agent, will monitor the progress of construction of the project and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, Tribal, State, and local code requirements and that construction proceeds in accordance with the plans, specifications, and contract documents.

(i) *Construction inspections.* The lender must notify the Agency of any scheduled field inspections during construction. The Agency may attend any field inspections the lender may conduct. Any Agency inspection, including those with the lender, are for the benefit of the Agency only (and not for the benefit of other parties in interest) and do not relieve any parties of interest of their responsibilities to conduct necessary inspections.

(ii) *Inspectors.* On a case-by-case basis in the event that the Agency determines that there is additional risk to the government, the Agency may require the use of a qualified, independent inspector to inspect construction to ensure the project is being adequately built to meet the borrower's requirements of the borrower's approved project and comply with all applicable codes and legal requirements.

(6) *Issuance of loan note guarantee prior to completion of the project's construction.* The lender may request that the loan note guarantee be issued prior to completion of a project's construction. The lender's request will be considered by the Agency, who may require credit risk mitigation. The lender must verify and include evidence of the following in its request:

(i) The promissory note specifying the full term of the note and containing the terms and conditions of each draw period;

(ii) The borrower and lender have entered into a contract with an independent disbursement and monitoring firm with a construction monitoring plan, acceptable to and approved by the Agency, or the lender demonstrates and documents that it has the capacity and experience to disburse funds and provide a monitoring plan acceptable to the Agency;

(iii) The borrower and lender have agreed to a detailed timetable for the project with a corresponding budget of costs setting forth the parties responsible for payment. The timetable and budget will be confirmed as adequate for the planned development by a qualified independent consultant (*e.g.,* the project architect or engineer) with demonstrated experience relating to the project's industry.

(iv) The borrower has entered into a firm, fixed-price construction contract with an independent general contractor with costs outlined in detail and terms specifying change order approvals, the agreed retainage percentage, and the disbursement schedule;

(v) Evidence the lender has properly vetted the financial feasibility and past performance of the contractor to show they are able to complete the project or that the lender has mitigated risk in the event the project is never completed, such as requiring a 100-percent performance/payment bond on the borrower's contractor to be maintained until the contractor is released from its obligation. The bonding agent must be listed on Treasury Circular 570;

(vi) Evidence, which the Agency at its sole discretion determines is satisfactory, that the lender has completed the due diligence necessary to confirm that the contractor is able to complete the project based on information including, but not limited to, the financial statements and past performance of the contractor;

(vii) When applicable, the borrower has entered into a contract with an independent technology development firm guaranteeing the following: Completion of the project with the necessary technology to successfully run the project and system performance for projects that utilize integrated processing equipment and systems. The intent of this provision is to ensure that all technology proposed for the project can be successfully integrated together to ensure successful installation and performance of the system;

(viii) Evidence, in form and substance satisfactory to the Agency, that sufficient contingency funding is in place to handle unforeseen cost overruns without seeking additional guaranteed assistance.

(7) *Reporting during construction.* Regardless of when the loan note guarantee is issued, all lenders must report any problems in project development to the Agency within 15 calendar days of identifying the problem. If the loan note guarantee has been issued prior to construction or completion of the project, the lender must provide monthly construction reports that contain:

(i) Certifications for each draw request as follows:

(A) Certification by the independent engineer or qualified consultant to the lender that the work referred to in the draw has been successfully completed; and

(B) Certification by the borrower and independent engineer or qualified consultant that the guaranteed loan funds of the prior draw have been applied to eligible project costs in accordance with the draw request and that the contractors have delivered mechanics lien waivers in connection with such draw;

(ii) List of invoices;

(iii) Details regarding the borrower's equity, other funds, and guaranteed loan funds disbursed to date;

(iv) Status of construction and inspection reports;

(v) Inspection reports; and

(vi) Explanation of concerns, potential problems, cost overruns, etc.

(8) *Use of guaranteed loan funds.* The lender must ensure that:

(i) All borrower funds are utilized prior to guaranteed loan funds;

(ii) Guaranteed loan funds are only used for eligible project costs in accordance with the purposes approved by the Agency in the conditional commitment and in accordance with the plans, specifications, and contract documents; and

(iii) The project will be completed within the approved budget.

(9) *Project completion.* Once construction of the project is completed, the lender must obtain and have on file all mechanics lien waivers or releases from all contractors and materialmen. The lender will provide to the Agency:

(i) A copy of the notice of completion or similar document issued by the relevant jurisdiction;

(ii) Certification that all funds were used for authorized purposes; and

(iii) A written certification that the project will be used for its intended purpose and will meet the borrower's needs and guaranteed loan purposes in accordance with the application approved by the Agency.

(h) *Compliance with other Federal laws.* Lenders and Borrowers must

comply with other applicable Federal laws, including Equal Employment Opportunity Act, the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

(i) *Environmental responsibilities.* The lender must ensure that the borrower has:

(1) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' or successor regulation, including the provision of all required Federal, State, and local permits;

(2) Complied with any mitigation measures required by the Agency; and

(3) Not taken any actions or incurred any obligations with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or that would have an adverse effect on the environment.

(j) *Servicing.*

(1) The provisions of 7 CFR 5001 Subpart F, including applicable definitions, will apply for servicing the loans guaranteed under this notice, including oversight, monitoring and reporting requirements and project completion requirements that are applicable to each guaranteed loan made under this part, except as may be otherwise indicated. Servicing topics covered include audits and financial reports; collateral; loan transfers and assumptions; lender transfers; mergers; servicing fees; subordinations of lien position; repurchases; additional expenditures and loans; interest rate changes; lender failures; borrower defaults; protective advances; liquidation; bankruptcy; litigation; loss calculations and payments; future recovery; property acquired by the lender; and termination of the loan note guarantee.

(2) In addition to the financial reports required under 7 CFR 5001.504, commencing the first full calendar year following the year in which project construction was completed and continuing for three full years, the lender shall obtain from the borrower and submit to the agency an outcome project performance report noting the project's success in increasing capacity or contributing to the resilience, diversity, or security of food supply chains. The project performance metrics shall align with the information provided in the feasibility study about how the project would increase capacity or make the food supply chain more resilient, diverse, or secure. If the project has not performed as intended, a report detailing the circumstances affecting performance must be provided to the Agency. The lender must submit project performance reports to the Agency within 120 days of the end of the borrower's fiscal year.

G. Federal Awarding Agency Contact(s)

For general questions about this notice, please contact *rdfoodsupplychainloans@usda.gov* as outlined in the **ADDRESSES** section of this notice or the program website at: *https://www.rd.usda.gov/foodsupplychainloans.*

H. Other Information

(a) *Exception authority.* The Administrator may, on a case-by-case basis grant an exception to any requirement or provision of this notice provided that such an exception is in the best financial interests of the Federal government. Exercise of this authority cannot be in conflict with applicable law.

(b) *Appeals.* Borrowers, lenders, and holders may have appeal or review rights for Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by NAD. All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

(1) The borrower, lender, and holder can appeal any Agency decision that directly and adversely affects them.

(i) For an adverse decision that affects the borrower, the lender and borrower must jointly execute a written request for appeal of an adverse decision made by the Agency.

(ii) An adverse decision that affects only the lender can be appealed by the lender only.

(iii) An adverse decision that affects only the holder can be appealed by the holder only.

(2) In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision can be appealed only by the lender.

(3) A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, even if it was concurred in by the Agency, and therefore cannot be reviewed for appealability or appealed to NAD.

(c) *General lender responsibilities.*

(1) Lenders are responsible for originating and servicing loans guaranteed by the Agency under this notice in accordance with the provisions of this notice. Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities.

(2) Lenders can contract for services, but such contracting does not relieve a lender from its responsibilities as identified in this notice.

(3) If a lender fails to comply with the requirements of this notice, the Agency may reduce any loss payment in accordance with the lender's agreement and loan note guarantee.

(4) Lenders are responsible for becoming familiar with Federal environmental requirements; considering, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and developing proposals that minimize the potential to adversely impact the environment.

(i) Lenders must assist the borrower in providing details of the project's impact on the environment and historic properties in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' (or successor regulation), when applicable; assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems.

(ii) Lenders must ensure the borrower has:

(A) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' or successor regulation, including the provision of all required Federal, Tribal, State, and local permits;

(B) Complied with any mitigation measures required by the Agency; and

(C) Not taken any actions or incurred any obligations with respect to the proposed project that will either limit the range of alternatives to be considered during the Agency's environmental review process or that will have an adverse effect on the environment.

(iii) Lenders must alert the Agency to any environmental issues related to a proposed project or items that may require extensive environmental review.

(d) *Approvals, regulations, and forms.*

(1) When Agency approval or concurrence is required, it must be in writing and must be obtained prior to the action for which approval or concurrence is required is taken.

(2) All references to statutes and regulations include any and all successor statutes and regulations.

(3) All references to forms include any and all successor forms as specified by the Agency.

(4) Copies of all regulations and forms referenced in this notice can be obtained through the Agency and from the Agency's website at *https://www.rd.usda.gov/foodsupplychainloans.*

(e) *Eligible lenders.*

(1) To become a lender under this notice, the lending entity must meet the requirements specified in 7 CFR 5001.130 Lender eligibility requirements. Lenders approved by the Agency as an eligible lender under 7 CFR 5001.130 and that are in compliance with 7 CFR 5001.132 ''Maintenance of approved lender status'' and the requirements of this notice, are eligible lenders under this notice. Lenders must continue to comply with the requirements of 7 CFR 5001.132 ''Maintenance of approved lender status.''

(2) All lenders must have a UEI which can be obtained at *https://www.SAM.gov/content/home.*

(i) Each lender applying for loan guarantee must (A) be registered in the System for Award Management (SAM) before submitting its application and (B) provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(ii) Lender must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active FSC guaranteed loan or an application under consideration by the Agency.

(iii) Lender must complete the Financial Assistance General Certifications and Representations in SAM.

(iv) The Agency will not determine lender eligibility until the lender has complied with all applicable UEI and SAM requirements. If a lender has not fully complied with the requirements by the time the Agency is ready to approve the guaranteed loan application, the Agency may determine that the lender is not eligible under this notice.

(f) *Lender's agreement.*

Agency approval of the lender will be evidenced by an outstanding lender's agreement, between the Agency and the lender. When approved to participate as a lender under this notice, the lender must execute a lender's agreement before the Agency will issue a loan note guarantee.

(g) *Access to records.*

The lender must permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency. In addition, the lender must cooperate fully with Agency oversight and monitoring of all lenders involved in any manner with any guarantee to ensure compliance with this Notice. Such oversight and monitoring will include, but is not limited to, reviewing lender records and meeting with lenders.

(h) *Guarantee provisions.*

(1) A loan note guarantee issued under this notice constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder, or which a lender or holder participates in or condones.

(2) A guaranteed loan under this notice will be evidenced by a loan note guarantee issued by the Agency.

(3) The entire loan must be secured by the same collateral with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the guaranteed loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior lien position in the guaranteed loan collateral may be considered on a case-by-case basis and must be approved by the Agency.

(4) The lender must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the guaranteed loan.

(5) The lender will receive all payments of principal and interest on account of the entire guaranteed loan and must promptly remit to each holder and participant, if any, its pro rata share of any payment within 30 days of the lender's receipt thereof from the borrower. Holder or participant payments are determined according to their respective interest in the guaranteed loan, less only the lender's servicing fee.

(6) Any claim against a loan note guarantee or assignment guarantee agreement that is attached to, or relating to, a promissory note that provides for payment of interest-on-interest, default charges, penalty interest, or late payment fees will be reduced to remove such interest, fees, and charges.

(7) The loan note guarantee is unenforceable by the lender to the extent that any loss is occasioned by:

(i) The violation of usury laws;

(ii) Use of guaranteed loan funds for unauthorized loan purposes in accordance with Section C.(d) of this notice or to the extent that those funds are used for purposes other than those specifically approved by the Agency in its conditional commitment or amendment thereof;

(iii) Failure to obtain, perfect, document, and or maintain the required collateral or security position regardless of the time at which the Agency acquires knowledge thereof; and

(iv) Negligent loan origination or negligent loan servicing as determined and documented by the Agency.

(8) The Agency will guarantee payment as follows:

(i) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the guaranteed loan it owns and on interest due (as determined under paragraph (h)(9) of this section) on such portion less any outstanding servicing fee.

(ii) To the lender, any loss sustained by the lender on the guaranteed portion of the guaranteed loan, including principal and interest (as determined under paragraph (h)(9) of this section) evidenced by the promissory note(s) or assumption agreements entered into in connection with an Agency approved transfer and assumption, and secured advances for protection and preservation of collateral made with the Agency's authorization if applicable.

(9) Accrued interest payments. The Agency will guarantee accrued interest in accordance with paragraph (h)(9)(i) or (ii), as applicable, of this section.

(i) If the lender owns all or a portion of the guaranteed portion of the guaranteed loan or makes a protective advance, the Agency, in its sole discretion, may cover interest on the guaranteed portion for the 90 days from the most recent delinquency effective date, and up to a total of 180 days, only if:

(A) The lender, and not the Agency, has repurchased all holder interests in the guaranteed loan;

(B) The lender is actively engaged in a credit resolution with the borrower to bring the account current or fully liquidate the collateral under the terms of a liquidation plan approved by the Agency; and

(C) Concurrence for inclusion of the extended period of interest to the lender is received from the Agency.

(ii) If the guaranteed loan has one or more holders, the lender will issue an interest termination letter to each holder establishing the termination date for interest accrual. The loan note guarantee will not cover interest to any holder accruing after the greater of 90 days from the date of the most recent delinquency effective date as reported by the lender or 30 days from the date of the interest termination letter. The Agency at its sole discretion may notify each holder of the interest termination provisions if it is determined that lender correspondence to holders is inadequate.

(i) *Participation or assignment of guaranteed loan.*

(1) *General.* The lender may obtain participation in the loan or assign all or part of the guaranteed portion of the guaranteed loan on the secondary market subject to the conditions specified in paragraphs (1) through (8) of this section or retain the entire guaranteed loan.

(2) *Participation.* The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to and possession of the promissory note(s) and retain the lender's interest in the collateral.

(3) *Assignment.* Any assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the lender's agreement and the provisions of this section. The holders and the borrower have no rights or obligations to one another.

(4) *Minimum retention by the lender.* Minimum retention at all times must be from the unguaranteed portion of the loan and cannot be participated to another person.

(i) The lender must hold a minimum of 7.5 percent of the total loan amount.

(ii) The lender must retain its security interest in the collateral and retain the servicing responsibilities for the guaranteed loan.

(iii) The Agency can approve a reduction of the minimum retention requirement below the applicable percentage on a case-by-case basis when the lender establishes to the Agency's satisfaction that reduction of the minimum retention percentage is necessary to meet compliance with the lender's regulatory authority.

(5) *Prohibition.* The lender must not assign or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower, borrower's officers, directors, stockholders, other owners, or to members of their immediate families, or to a parent company, an affiliate, or a subsidiary of the borrower.

(6) *Secondary market.* The lender must properly close its loan and fully disburse loan funds of a promissory note for the approved purposes of the loan prior to assignment of the guaranteed portion of the promissory note(s) on the secondary market. The lender can assign all or part of the guaranteed portion of the loan only if the loan is not in default.

(7) *Lender's servicing fee to holder.* The assignment guarantee agreement must clearly state the guarantee portion of loan as a percentage and corresponding dollar amount of the guaranteed portion of the guaranteed loan it represents and the lender's servicing fee. The lender cannot charge the Agency a servicing fee and servicing fees are not eligible expenses for loss claim.

(8) *Distribution of proceeds.* The lender must apply all loan payments and collateral proceeds received, after payment of liquidation expenses, to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(9) *Promissory note(s).* A loan note guarantee is issued to the lender for a specific promissory note(s) executed between the lender and the borrower. The lender must retain title to and possession of the guaranteed promissory note(s), retain the lender's interest in the collateral, and retain the servicing responsibilities for the guaranteed loan. The lender is prohibited from issuing any additional promissory notes at a later date for the same guaranteed loan.

(i) The lender may assign all or part of the guaranteed portion of the loan, including interest strips, to one or more holders by using an assignment guarantee agreement for each holder. The lender must complete and execute the assignment guarantee agreement and return it to the Agency for execution prior to holder execution.

(ii) The lender or holder may request a certificate of incumbency and signature from the Agency.

(iii) A holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, assigned under the assignment guarantee agreement. Holders can only reassign the complete block they have received and cannot subdivide or further split their interest in the guaranteed portion of a loan or retain an interest strip.

(iv) Upon notification and completion of the assignment through the use of the assignment guarantee agreement, the assignee succeeds to all rights and obligations of the holder thereunder. Subsequent assignments require notice to the lender and Agency using any format, including that used by the Securities Industry and Financial Markets Association (formerly known as the Bond Market Association), together with the transfer of the original assignment guarantee agreement.

(v) The Agency will not execute a new assignment guarantee agreement to affect a subsequent reassignment.

(10) *Rights and liabilities.* When a guaranteed portion of a loan is assigned to a holder using an assignment guarantee agreement, the holder succeeds to all rights of the lender under the loan note guarantee to the extent of the portion purchased. The full, legal interest in the promissory note must remain with the lender, and the lender remains bound to all obligations under the loan note guarantee, lender's agreement, and Agency regulations applicable to the guarantee.

(i) A guarantee and right to require purchase in accordance with the provisions of this Notice will be directly enforceable by a Holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the loan guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones.

(ii) The lender must not represent a conditional commitment of guarantee as a loan guarantee.

(iii) The lender must reimburse the Agency for any payments the Agency makes to a holder on the lender's behalf under the loan note guarantee, given the lender would not be entitled to the payments had they retained the entire interest in the loan.

(j) *Repurchase from holder.*

(1) *General.* A holder can make written demand on either the lender or the Agency to repurchase the unpaid guarantee portion of the loan when the borrower is in monetary default or when the lender has failed to pay the holder its pro-rata share of any payment made by the borrower within 30 days of the lender's receipt thereof from the borrower. When making written demand on the lender, the holder must concurrently send a copy of the demand letter to the Agency.

(i) The lender is encouraged to repurchase the guarantee, upon written demand of a holder, to facilitate the accounting of funds, resolve any loan problem, and resolve the monetary default, where and when reasonable. The benefit to the lender is that it may re-assign the guaranteed portion of the loan and then continue collection of its

servicing fee, if any, when the monetary default is cured.

(ii) When a lender receives a written demand for repurchase from a holder, the lender must notify any other holder and the Agency within 30 calendar days of receipt of the written demand. The lender must inform all parties if the lender will repurchase the unpaid guaranteed portion of the loan from the requesting holder.

(iii) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(2) *Repurchase by lender for loan servicing purposes.* If the lender, borrower, and holder are unable to agree to restructuring of loan repayment, interest rate, or loan terms to resolve any loan problem or resolve any default and repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must reassign the guaranteed portion of the loan to the lender. The reassignment must be for an amount not less than the holder's portion of unpaid principal and accrued interest on such portion less the lender's servicing fee.

(i) Upon repurchase the holder will re-assign the assignment guarantee agreement to the lender without recourse.

(ii) The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain.

(iii) Any repurchase from a holder may only be made after the lender obtains the Agency's written approval.

(3) *Agency repurchase.* If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion of the loan for loan servicing purposes. A holder can submit a written demand to the Agency for repurchase only if the lender declines to repurchase. If a prior written demand was not made upon the lender, the Agency will notify the lender and allow up to seven calendar days for the lender to exercise its option to repurchase as provided in this section.

(4) *Lender does not repurchase.* If the lender does not repurchase the unpaid guaranteed portion of a loan as provided in paragraph (j)(1) of this section, the Agency will, within 30 calendar days after written demand to the Agency from the holder, purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase or the interest termination date, whichever is sooner, less the lender's servicing fee. The guarantee will pay accrued interest to the holder on the loan as determined under this notice.

(5) *Written demand content.* The holder must include in its written demand to the Agency:

(i) A copy of the written demand made upon the lender;

(ii) A copy of the lender's denial to repurchase the unpaid guaranteed portion of the guaranteed loan;

(iii) Evidence of the right to require payment from the Agency as provided by the holder or duly authorized agent. Such evidence must consist of the original assignment guarantee agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan;

(iv) The amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date; and

(v) When the initial holder has assigned its interest, the original assignment guarantee agreement and an original of each Agency-approved reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee.

(6) *Payment.* Unless otherwise agreed upon, payment will not be later than 30 calendar days from the date of demand.

(i) Upon request by the Agency, the lender must promptly furnish (within 30 calendar days of such request) a current statement, certified by an appropriate authorized officer of the lender, of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-calendar-day payment requirement.

(iii) If a repurchase of a guaranteed loan includes the capitalization of interest, interest accrued on the capitalized interest will not be paid to the holder.

(7) *Subrogation.* When the Agency purchases a loan from a holder it assumes all rights that were previously held by the holder.

(8) *Servicing fee.* When the Agency purchases the guaranteed portion of the loan from a holder, the lender's servicing fee will stop on the date that interest was last paid by the borrower. The lender can neither charge a servicing fee to the Agency nor collect such fee from the Agency.

(9) *Accrued interest.* If the Agency repurchases 100 percent of the guaranteed portion of a loan and becomes the holder, interest accrual on the loan will cease until the lender resumes remittance of the pro rata payments to the Agency.

(10) *Establishing interest termination date.* When a guaranteed loan has been delinquent more than 60 calendar days and no holder comes forward or when the lender has accelerated the account, and subject to the expiration of any forbearance or workout agreement, the lender, or the Agency at its sole discretion, must issue a letter to the holder(s) establishing the interest termination date.

(11) *Obligations and rights.* Purchase by the Agency neither changes, alters, or modifies any of the lender's obligations to the Agency arising from the lender's agreement, guaranteed loan, or loan note guarantee, nor does it waive any of the Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the loan note guarantee.

(12) *Accelerated loan.* When the lender has accelerated the loan and the lender holds all or a portion of the guaranteed loan, an estimated loss claim must be filed by the lender with the Agency within 60 calendar days from the date the loan was accelerated.

(13) *Interest termination during bankruptcy.* When a borrower files a Chapter 7 liquidation plan, the lender shall immediately notify the Agency and submit a liquidation plan. The Agency will establish an interest termination date based on the date Interest was last paid to the lender. When a borrower files either a Chapter 9 or Chapter 11 bankruptcy restructuring plan, the Agency and lender shall meet to discuss the bankruptcy procedure, the ability of the borrower to meet their restructuring plan, the lender's treatment of accruing interest, and potentially establish an interest termination date for the guaranteed loan. If the restructuring bankruptcy Chapter 9 or Chapter 11 is converted to a liquidation bankruptcy Chapter 7 by court order, the interest termination date will be the date of such conversion.

I. Statutory and Executive Order Reviews

(a) *Paperwork Reduction Act.*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), USDA requested that the Office of Management and Budget (OMB) conduct an emergency review of a new information collection that contains the Information Collection and Recordkeeping requirements contained in this notice.

In addition to the emergency clearance, the regular clearance process is hereby being initiated to provide the public with the opportunity to comment under a full comment period, as the Agency intends to request regular approval from OMB for this information collection. Comments from the public on new, proposed, revised, and continuing collections of information help the Agency assess the impact of its information collection requirements and minimize the public's reporting burden. Comments may be submitted regarding this information collection through the Federal eRulemaking Portal at *https://www.regulations.gov.* In the ''Search for Rules, Proposed Rules, Notices or Supporting Documents'' box, type ''RBS–21–BUSINESS–0036'' to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link. Comments on this information collection must be received by February 7, 2022.

Title: Food Supply Chain Guaranteed Loan Program.

OMB Control Number: 0570–NEW.

The following estimates are based on the average over the first 3 years the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.542 hours per response.

Respondents: Institutions of higher education, private entities, governmental entities, nonprofits, Indian Tribes, district organizations.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 22.6.

Estimated Number of Responses: 6,782.

Estimated Total Annual Burden (hours) on Respondents: 17,241.

Copies of this information collection may be obtained from Susan Woolard, Regulatory Division, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone: 202–720–9631; email: *susan.woolard@usda.gov.* All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

(b) *Congressional Review Act*

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of $100,000,000 or more. Accordingly, there is a 60-day delay in the effective date of this action. Application selection will not begin until after February 7, 2022. Therefore, the 60-day delay required by the CRA is not expected to have a material impact upon the administration and/or implementation of the FSC program.

(c) *National Environmental Policy Act.*

All recipients under this notice are subject to the requirements of 7 CFR part 1970. The Agency will review each guaranteed loan application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

(d) *Non-Discrimination Statement.*

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov*.

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Karama Neal,

Administrator, Rural Business—Cooperative Service, Rural Development.

[FR Doc. 2021–26693 Filed 12–8–21; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2021]

Foreign-Trade Zone (FTZ) 43—Battle Creek, Michigan; Authorization of Production Activity; Pfizer, Inc.; (mRNA COVID–19 Vaccine); Kalamazoo, Michigan

On August 6, 2021, Pfizer, Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 43E, in Kalamazoo, Michigan.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 46177, August 18, 2021). On December 6, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 6, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–26682 Filed 12–8–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Dongkuk Steel Mill Co., Ltd. (Dongkuk) made sales of subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) July 1, 2019, through June 30, 2020. In addition, Commerce determines that Hyundai Steel Company (Hyundai) did not make sales of subject merchandise in the United States at prices below NV during the POR.

DATES: Applicable December 9, 2021.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2021, Commerce published the preliminary results of the 2019–2020 administrative review of the antidumping duty order on certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea).[1] The administrative review covers nine exporters and/or producers of the subject merchandise,[2] of which we selected Dongkuk and Hyundai as mandatory respondents.[3] For the events that occurred since the Preliminary Results, see the Issues and Decision Memorandum.[4] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [5]

The merchandise covered by the *Order* is CORE from Korea. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

We made no changes to the *Preliminary Results.*

Rates for Companies Not Selected for Individual Examination

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which we did not individually examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis,* or based entirely on facts available (FA) in calculating an all-others rate. Accordingly, Commerce's practice in administrative reviews has been to average the weighted-average dumping margins for the companies selected for individual examination in the administrative review, excluding rates that are zero, *de minimis,* or based entirely on FA.[6] For these final results of review, we calculated a weighted-average dumping margin for Dongkuk that is not zero, *de minimis,* or based entirely on FA. Therefore, consistent with our practice, we have assigned the companies not selected for individual examination the weighted-average dumping margin calculated for Dongkuk.

Final Results of the Administrative Review

We determine that the following weighted-average dumping margins exists for the period July 1, 2019, through June 30, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Dongkuk Steel Mill Co., Ltd	0.59
Hyundai Steel Company	0.00
KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.)/ Dongbu Incheon Steel Co., Ltd [7]	0.59
POSCO	0.59
POSCO Daewoo Corporation	0.59
POSCO International Corporation (formerly POSCO Daewoo Corporation)	0.59
POSCO Coated & Color Steel Co., Ltd	0.59

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the

[1] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 2019–2020,* 86 FR 42784 (August 5, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] The nine companies are: (1) Dongbu Incheon Steel Co., Ltd.; (2) Dongbu Steel Co., Ltd.; (3) KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.); (4) Dongkuk Steel Mill Co., Ltd. (Dongkuk); (5) Hyundai Steel Company (Hyundai); (6) POSCO; (7) POSCO Coated & Color Steel Co., Ltd.; (8) POSCO Daewoo Corporation; and (9) POSCO International Corporation (formerly, POSCO Daewoo Corporation).

[3] *See Preliminary Results,* 86 FR at 42785.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2019–2020 Antidumping Duty Administrative Review: Certain Corrosion-Resistant Steel Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (*Order*).

[6] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[7] In a recently completed changed circumstances review, Commerce found that KG Dongbu Steel Co., Ltd. is the successor-in-interest to Dongbu Steel Co., Ltd. for purposes of determining antidumping cash deposits and liabilities. *See Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews,* 86 FR 10922 (February 23, 2021). Also, in the previous segment of this proceeding, Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd. were collapsed and treated as a single entity for antidumping purposes. *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results and*

Continued

calculations performed in connection with a final results of review, in accordance with 19 CFR 351.224(b). However, because Commerce made no adjustments to the margin calculation methodology used in the *Preliminary Results,* there are no additional calculations to disclose for the final results of this review.

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent did not report entered value, we calculated importer-specific per-unit duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. To determine whether an importer-specific per-unit duty assessment rate is *de minimis,* we calculated an estimated entered value.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[8]

Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by any of the above-referenced respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (as amended) [9] if there is no rate for the intermediate company(ies) involved in the transaction.[10]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for each company listed above will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 8.31 percent, the all-others rate established in the LTFV investigation (as amended) in this proceeding.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results of administrative review in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 3, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–26655 Filed 12–8–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Partial Rescission of Antidumping Duty Administrative Review; 2018–2019, 85 FR 74987 (November 24, 2020), unchanged in *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 28571 (May 27, 2021). As the facts have not changed with respect to these companies, we continue to treat them as a single entity for purposes of this review.

[8] *See* section 751(a)(2)(C) of the Act.

[9] *See Order;* and *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results,* 83 FR 39054 (August 8, 2018) (*Timken and Amended Final Results*).

[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Order,* as amended by *Timken and Amended Final Results.*

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on potassium permanganate from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable December 9, 2021.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1984, Commerce published the AD order on potassium permanganate from China.[1] On February 1, 2021, the ITC instituted,[2] and Commerce initiated, the fifth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] As a result of its review, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the *Order* be revoked.[4]

On December 2, 2021, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The merchandise covered by the *Order* is potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. Potassium permanganate is currently classifiable under subheading 2841.61.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise remains dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or a recurrence of dumping, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Order.*

U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 3, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–26658 Filed 12–8–21; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order; Potassium Permanganate from the People's Republic of China,* 49 FR 3897 (January 31, 1984) (*Order*).

[2] *See Potassium Permanganate from China; Institution of Five-Year Reviews,* 86 FR 7743 (February 1, 2021).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 7709 (February 1, 2021).

[4] *See Potassium Permanganate from the People's Republic of China: Final Results of the Expedited Sunset Review of Antidumping Duty Order,* 86 FR 30256 (June 7, 2021), and accompanying Issues and Decision Memorandum.

[5] *See Potassium Permanganate from China; (Investigation No. 731–TA–125 (Fifth Review)),* 86 FR 68512 (December 2, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–144]

Freight Rail Coupler Systems and Certain Components Thereof From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance International Trade Administration, Department of Commerce.

DATES: Applicable December 9, 2021.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon and Robert Scully, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274 and (202) 482–0572, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 2021, the Department of Commerce (Commerce) initiated the countervailing duty (CVD) investigation of imports of freight rail coupler systems and certain components thereof (freight rail couplers) from the People's Republic of China (China).[1] Currently, the preliminary determination is due no later than December 23, 2021.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reason for the request.

[1] *See Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 86 FR 58878 (October 25, 2021).

Commerce will grant the request unless it finds compelling reasons to deny the request.

On November 29, 2021, the petitioner[2] in this investigation submitted a timely request that Commerce postpone the preliminary CVD determination.[3] The petitioner stated that it is requesting a postponement because additional time is needed to collect the necessary information for determining the most accurate possible CVD rates.[4]

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* February 28, 2022.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: December 3, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–26642 Filed 12–8–21; 8:45 am]

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[2] The petitioner is the Coalition of Freight Coupler Producers.

[3] *See* Petitioner's Letter, ''Freight Rail Car Couplers Systems and Certain Components Thereof from the People's Republic of China: Request to Postpone Preliminary CVD Determination,'' dated November 29, 2021.

[4] *Id.* at 2.

[5] The preliminary determination deadline falls on February 26, 2022, which is a Saturday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The Department of Commerce (Commerce) published notice in the **Federal Register** of September 30, 2021, of the amended final results of the 2017–2018 administrative review of the antidumping duty order on certain frozen warmwater shrimp from India. This notice reflected incorrect cash deposit instructions for Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co. and Milsha Agro Exports Pvt. Ltd.

DATES: Applicable December 9, 2021.

FOR FURTHER INFORMATION CONTACT: David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3693.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 30, 2021, in FR Doc 2021–21256, on page 54157, in the second column under the section titled, ''Cash Deposit Requirements,'' correct the cash deposit instructions to be issued to U.S. Customs and Border Protection (CBP). Specifically, Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co. does not have a superseding cash deposit rate; therefore, we will issue revised cash deposits instructions to CBP. In addition, Milsha Agro Exports Pvt. Ltd. has a superseding cash deposit rate; therefore, we will not issue revised cash deposit instructions to CBP.

Background

On September 30, 2021, Commerce published in the **Federal Register** the amended final results of the administrative review of the antidumping duty order on shrimp from India covering the period Feburary 1, 2017, through January 31, 2018.[1] In the *Amended Final Results,* we incorrectly stated that Calcutta Seafoods Pvt. Ltd./Bay Seafood Pvt. Ltd./Elque & Co. had a superseding cash deposit rate; however, no such instructions have been issued. Because no superseding rate is in place, we will issue revised cash deposit instructions to CBP. In addition, in the *Amended Final Results,* we incorrectly stated that we would issue revised cash deposit instructions to CBP with respect to Milsha Agro Exports Pvt. Ltd. However, this company currently has a superseding rate, and, therefore, no revised cash deposit instructions will be issued. This notice serves to correct these errors. No other changes have been made to the *Amended Final Results.*

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 3, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–26653 Filed 12–8–21; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Frozen Warmwater Shrimp from India: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results,* 86 FR 54156 (September 30, 2021) (*Amended Final Results*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB624]

Pacific Fishery Management Council; Public Meetings; Public Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2022 ocean salmon fisheries. This document announces the availability of Pacific Council documents, as well as the anticipated dates and locations of upcoming Pacific Council meetings and public hearings hosted by the Pacific Council. These documents and events comprise the Pacific Council's complete schedule for determining the annual proposed and final modifications to

ocean salmon fishery management measures. The agendas for the March and April 2022 Pacific Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management alternatives must be submitted through the Pacific Council's e-portal (*https://pfmc.psmfc.org*) and received by the public comment deadline prior to the April 2022 Council meeting. Information will be available on the Pacific Council's website (*http://www.pcouncil.org*) as the date for the April Council meeting approaches.

ADDRESSES:

Meeting address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax).

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION:

February 15, 2022: ''Review of 2021 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

March 4, 2022: ''Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2022 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

March 22, 2022: ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2022 Ocean Salmon Fishery Regulations.'' The report will include a description of the adopted salmon management alternatives and a summary of their biological and economic impacts. The public hearings schedule will also be included on the inside cover of the report and will be posted on the Pacific Council website at *http://www.pcouncil.org.*

April 22, 2022: ''Preseason Report III—Council-Adopted Management Measures and Environmental Assessment Part 3 for 2022 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

May 16, 2022: Federal regulations for 2022 ocean salmon regulations are published in the **Federal Register** and implemented.

Meetings and Hearings

January 18–21, 2022: The Salmon Technical Team (STT) will meet online in a public work session to draft ''Review of 2021 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' and to consider any other estimation or methodology issues pertinent to the 2022 ocean salmon fisheries. The STT may also discuss additional topics as time allows, including but not limited to a harvest control rule for southern Oregon/Northern California Coast coho salmon, potential impacts to fishery management due to COVID–19 in 2021, ecosystem or administrative matters on the Pacific Council's March and April 2022 meetings, and various salmon related topics of pertinence.

February 22–25, 2022: The STT will meet online in a public work session to draft ''Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2022 Ocean Salmon Fishery Regulations'' and to consider any other estimation or methodology issues pertinent to the 2022 ocean salmon fisheries. The STT may also discuss additional topics as time allows, including but not limited to a harvest control rule for southern Oregon/Northern California Coast coho salmon, potential impacts to fishery management due to COVID–19 in 2021, ecosystem or administrative matters on the Pacific Council's March and April 2022 meetings, and various salmon related topics of pertinence.

March 22–23, 2022: Three public hearings will be held to receive comments on the proposed 2022 ocean salmon fishery management alternatives adopted by the Pacific Council. Each public hearing will be state-specific and begin at 7 p.m. Public hearings focusing on Washington and California salmon fisheries will occur simultaneously on March 22, and the public hearing for Oregon salmon fisheries will occur on March 23. These public hearings are tentatively scheduled to occur in person, in the cities of Westport, Washington; Coos Bay, Oregon; and Eureka, California; however, the status of the COVID–19 pandemic may require the meetings to be held online due to public health and safety concerns. Actual hearing venues or instructions for joining online hearings will be posted on the Pacific Council's website (*http://www.pcouncil.org*) in advance of the hearing dates.

A summary of oral comments heard at the hearings will be provided to the Pacific Council at its April meeting. Written comments on the salmon management alternatives must be submitted through the Pacific Council's e-portal (*http://www.pcouncil.org*).

Specific meeting information, including instructions on how to join the meeting and system requirements will be provided in meeting announcements on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Although non-emergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: December 6, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–26687 Filed 12–8–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB621]

Fisheries of the South Atlantic, Gulf of Mexico, and 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 Webinar IV for SEDAR Procedural Workshop 8: Fishery

Independent Index Development Under Changing Survey Design.

SUMMARY: The SEDAR Procedural Workshop 8 for Fishery Independent Index Development will consist of a series of webinars and an in-person workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Procedural Workshop 8 Webinar IV will be held on January 10, 2022, from 1 p.m. to 3 p.m. Eastern.

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 data analysis for the SEDAR Procedural Workshop 8.

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

These meetings are 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 10 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: December 6, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–26686 Filed 12–8–21; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of a new system of records.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is establishing a new system of records, CFTC–57, Reasonable Accommodations Records, to receive, track, process, and report on requests for reasonable accommodations.

DATES: In accordance with 5 U.S.C. 552(e)(4) and (11), this notice will go into effect without further notice on December 9, 2021 unless otherwise revised pursuant to comments received. All routine uses will go into effect on January 10, 2022. Comments must be received on or before January 10, 2022.

ADDRESSES: You may submit comments, identified as pertaining to ''CFTC–57, Reasonable Accommodations Records,'' by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this notice and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, be accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of a submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this notice will be retained in the comment file and will be considered as required under all applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Charles Cutshall, Chief Privacy Officer, *privacy@cftc.gov,* 202–418–5833, Legal Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Federal agencies are required by law to provide reasonable accommodations and personal assistance services to qualified employees and applicants. Reasonable accommodations can apply to the duties of the job and/or where and how job tasks are performed. Reasonable accommodations may include, but are not limited to: Making existing facilities readily accessible to individuals with disabilities; restructuring jobs, modifying work schedules or places of work (*i.e.,* telework), and providing

flexible scheduling for medical appointments or religious observance; acquiring or modifying equipment or examinations or training materials; providing accessible technology or other workplace adaptive equipment; providing qualified readers and interpreters, personal assistants, service animals; granting permission to wear religious dress, hairstyles, or facial hair or to observe a religious prohibition against wearing certain garments; considering requests for medical and religious exemptions to specific workplace requirements; and making other modifications to workplace policies and practices.

SYSTEM NAME AND NUMBER:

Reasonable Accommodations Records—CFTC–57.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system is maintained by the Chief Human Capital Officer in the Commission's office at Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Records may also be located at the regional offices in Chicago, Illinois; Kansas City, Missouri; and New York, New York.

SYSTEM MANAGER(S):

Chief Human Capital Officer, Human Resources Branch of the Division of Administration, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Email is *WorkforceRelations@cftc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Rehabilitation Act of 1973, sections 501 and 504, Public Law 93–112, as amended; the Americans with Disabilities Act (ADA) of 1990, Public Law 101–336 (1990), as amended by the ADA Amendments Act of 2008 (ADAA), Public Law 110–325 (2009); Title VII of the Civil Rights Act of 1964, Public Law 88–352, as amended; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; 29 CFR 1605 (Guidelines on Discrimination Because of Religion), Executive Order 13164 (July 28, 2000); Executive Order 13548 (July 26, 2010); and Executive Order 14043 (September 9, 2021).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to receive, track, process, and report the processing of requests for reasonable accommodations and for personal assistance services. It maintains records from qualified employees and applicants with disabilities, as defined by the Rehabilitation Act of 1973 and the Americans with Disabilities Act, as amended by the Americans with Disabilities Amendments Act of 2008, and records from employees with targeted disabilities who request or receive personal assistance services. It also maintains records received from employees who request or receive accommodations under Title VII of the Civil Rights Act of 1964.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include job applicants seeking employment with the CFTC and CFTC employees who request or receive reasonable accommodations under the Rehabilitation Act of 1973, Public Law 93–112, as amended, the Americans with Disabilities Act of 1990, Public Law 101–336 (1990), as amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAA), and Title VII of the Civil Rights Act of 1964, Public Law 88–352, as amended. It covers CFTC employees with targeted disabilities who request personal assistance services, as required by the Rehabilitation Act of 1973, Public Law 93–112, as amended. It also covers individuals or representatives (*e.g.,* a family member or attorney) authorized to request reasonable accommodations on behalf of an applicant for employment or employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about the individual who requires reasonable accommodations and the job for which they are either an applicant or employed includes:

- First, middle, and last name of the individual who requires the accommodation;
- Address, phone number, and email address of the person who requires the accommodation;
- Job (occupational series, grade level, and office) for which reasonable accommodations was requested; and,
- Date of request.

Information about the nature of the disability and/or need for reasonable accommodations includes:

- Medical documentation provided by the requester or at the requestor's direction or request (*e.g.,* by a representative or the individual's healthcare provider) as required to substantiate an individual's disability or need to care for themselves or a family member;
- Information about a requestor's religious beliefs, provided by the requestor in support of a request for accommodation; and
- Type(s) of accommodation(s) requested or received.

Information associated with the receipt and adjudication of requests for reasonable accommodations includes:

- Request approvals and denial notices;
- Forms, correspondence, records of oral conversations, and supporting notes and documentation associated with an informal dispute resolution or appeal processes;
- Expense(s) information associated with the requested accommodation;
- Whether an accommodation requested or provided occurred pre-employment or during employment; and
- The sources of technical assistance consulted in trying to identify a possible reasonable accommodation.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants and employees; an individual's licensed healthcare professional, religious or spiritual advisors or institutions, and from management officials; and authorized individuals or representatives (*e.g.,* family member or attorney) who request reasonable accommodations and/or receive a reasonable accommodations or other appropriate modification from CFTC on behalf of an applicant or employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information may be disclosed to the Department of Justice or other federal entity, the Merit Systems Protection Board, the Office of Special Counsel, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, or in the course of civil discovery, litigation, or settlement negotiations, in actions authorized under the Commodity Exchange Act and otherwise authorized, when:

a. The agency, or any component thereof; or

b. Any employee of the agency in their official capacity; or

c. Any employee of the agency in their personal capacity where the Department of Justice or the agency has agreed to represent the employee; or

d. The United States, when the litigation is likely to affect the CFTC or any of its components;

Is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed to be relevant and necessary to the litigation.

(2) To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate

authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations;

(3) To another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Commission is a party to the judicial or administrative proceeding where the information is relevant and necessary to the proceeding;

(4) To contractors, performing or working on a contract for the Commission when necessary to accomplish an agency function;

(5) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) To appropriate agencies, entities, and person when (1) the CFTC suspects or has confirmed that there has been a breach of the system of records; (2) the CFTC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the CFTC (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFTC efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(7) To another Federal agency or Federal entity, when the CFTC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

(8) To the National Archives and Records Administration (NARA) for records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(9) To medical personnel to meet a bona fide medical emergency; and

(10) To an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system of records are stored electronically or on paper in secure facilities. Electronic records are stored on the Commission's secure network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information covered by this system of records notice may be retrieved by the name of the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with NARA General Records Schedule (GRS) 2.3 (Employee Relations Records) item 20 (Reasonable accommodations case files). Disposition Authority: DAA–GRS–2018–0002–0002. Disposition Instruction: Temporary. Destroy three (3) years after employee separation from the agency or all appeals are concluded whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Medical and religious exemptions documentation supporting a reasonable accommodations request will be maintained in a confidential file separate and apart from the requestor's Official Personnel Folder or Employee Performance File. Records are protected from unauthorized access and improper use through administrative, technical, and physical security measures.

Technical security safeguards within CFTC include restrictions on computer access to authorized individuals who have a legitimate need to know the information; required use of strong passwords that are frequently changed; multi-factor authentication for remote access and access to many CFTC network components; use of encryption for certain data types and transfers; firewalls and intrusion detection applications; and regular review of security procedures and best practices to enhance security. Physical safeguards include restrictions on building access to authorized individuals, 24-hour security guard service, and maintenance of records in lockable offices and filing cabinets.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records should address written inquiries to the Legal Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. *See* 17 CFR 146.3 for full details on what to include in a Privacy Act access request.

CONTESTING RECORD PROCEDURES:

Individuals contesting the content of records about themselves contained in this system of records should address written inquiries to the Legal Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. *See* 17 CFR 146.8 for full details on what to include in a Privacy Act amendment request.

NOTIFICATION PROCEDURES:

Individuals seeking notification of any records about themselves contained in this system of records should address written inquiries to the Legal Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. *See* 17 CFR 146.3 for full details on what to include in a Privacy Act notification request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Issued in Washington, DC, on December 3, 2021, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2021–26632 Filed 12–8–21; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0165]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Magnet Schools Assistance Program Application for Grants

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 10, 2022.

ADDRESSES: Written comments and recommendations for proposed

information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Gillian Cohen-Boyer, 202–401–1259.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Magnet Schools Assistance Program Application for Grants.

OMB Control Number: 1855–0011.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 125.

Total Estimated Number of Annual Burden Hours: 5,062.

Abstract: The purpose of the Magnet Schools Assistance program, as outlined in the Every Student Succeeds Act (ESSA), Title IV, part D, Section 4401 is to assist eligible local educational agencies (LEAs) to establish and operate magnet schools under court-ordered or federally approved voluntary desegregation plans. Specifically, the program's purpose is to assist in the desegregation of public schools by supporting the elimination, reduction, and prevention of minority group isolation in elementary and secondary schools with substantial numbers of minority group students. Funded projects include the development and implementation of magnet schools that assist LEAs to create more diverse learning environments, as well as to achieve systemic reforms and provide opportunities for all students to meet challenging academic content and student academic achievement standards. MSAP projects support the development and design of innovative education methods and practices in new or existing magnet schools that will promote diversity and increase choices in public education programs. Finally, the program is intended to support the LEA's capacity development to continue the operation of the magnet schools at a high performance level after funding ends.

The U.S. Department of Education is requesting to revise a collection with one new form to make awards under the Magnet Schools Assistance Program (MSAP) using the approved application for grants (OMB Control Number 1855–0011). This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: December 6, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–26637 Filed 12–8–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–78–000]

ANR Pipeline Company; Notice of Availability of The Draft Environmental Impact Statement for the Proposed Wisconsin Access Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Wisconsin Access Project, proposed by ANR Pipeline Company (ANR) in the above-referenced docket. ANR requests authorization to modify seven existing meter stations in Oneida, Marathon, Oconto, and Manitowoc Counties, Wisconsin and increase firm transportation capacity on its pipeline by 50,707 dekatherms per day.

The draft EIS assesses the potential environmental effects of the construction and operation of the Wisconsin Access Project in accordance with the requirements of the National Environmental Policy Act. With the exception of climate change impacts, FERC staff concludes that approval of the Project would not result in significant environmental impacts. FERC staff is unable to determine the significance level of climate change impacts.

The draft EIS addresses the potential environmental effects of the construction and operation of minor modifications to ANR's existing Coleman, Lena, Meeme, Mosinee, Rhinelander, Suring, and Two Rivers Meter Stations. The modifications include the replacement of some metering and filtering equipment, installation of additional metering equipment, and replacement of two meter station buildings at the Lena and Rhinelander Meter Stations.

The Commission mailed a copy of the *Notice of Availability of the Draft Environmental Impact Statement for the Wisconsin Access Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search,'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–78). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208- 3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission

staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the draft EIS may do so. Your comments should focus on the draft EIS's disclosure and discussion of potential environmental effects, measures to avoid or lessen environmental impacts and the completeness of the submitted alternatives, information, and analyses. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on January 24, 2022.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's website (*www.ferc.gov*) under the link to *FERC Online.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–78–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: December 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26663 Filed 12–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–529–000]

299F2M WHAM8 Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of 299F2M WHAM8 SOLAR, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 23, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26665 Filed 12–8–21; 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:

Filings Instituting Proceedings

Docket Numbers: RP22–388–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SoCal Dec 2021) to be effective 12/2/2021.
Filed Date: 12/2/21.
Accession Number: 20211202–5123.
Comment Date: 5 p.m. ET 12/14/21.

Docket Numbers: RP22–389–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 12–2–21 to be effective 12/1/2021.
Filed Date: 12/2/21.
Accession Number: 20211202–5159.
Comment Date: 5 p.m. ET 12/14/21.

Docket Numbers: RP22–390–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing (ASA/PCB) eff 12/1/2021 to be effective 12/1/2021.
Filed Date: 12/2/21.
Accession Number: 20211202–5165.
Comment Date: 5 p.m. ET 12/14/21.

Docket Numbers: RP22–391–000.
Applicants: West Texas Gas Utility, LLC.
Description: § 4(d) Rate Filing: West Texas Gas Utility, LLC Revision to Update Name in Tariff to be effective 12/3/2021.
Filed Date: 12/2/21.
Accession Number: 20211202–5173.
Comment Date: 5 p.m. ET 12/14/21.

Docket Numbers: RP22–392–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: § 4(d) Rate Filing: NRA Revised Exhibits—Chesapeake to be effective 11/1/2021.
Filed Date: 12/2/21.
Accession Number: 20211202–5216.
Comment Date: 5 p.m. ET 12/14/21.

Docket Numbers: RP22–393–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Colonial OPT30- 259925 Rev Share Neg Rate Agreement to be effective 12/1/2021.
Filed Date: 12/2/21.
Accession Number: 20211202–5222.
Comment Date: 5 p.m. ET 12/14/21.

Docket Numbers: RP22–394–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update Filing (BHSC #218854) to be effective 1/1/2022.
Filed Date: 12/2/21.
Accession Number: 20211202–5246.
Comment Date: 5 p.m. ET 12/14/21.

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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26669 Filed 12–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 606–027]

Pacific Gas & Electric Company; Notice of Availability of Supplemental Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) Part 380, Commission staff prepared a Supplemental Environmental Assessment (Supplemental EA), to supplement its Final Environmental Impact Statement (Final EIS), issued August 16, 2011. On March 13, 2009, Pacific Gas & Electric Company (PG&E), filed with the Commission its application to surrender its license for the Kilarc-Cow Hydroelectric Project No. 606. The project is located on Old Cow Creek, South Cow Creek, and tributaries in Shasta County, California.

The Supplemental EA was prepared to address changes that have occurred since the issuance of the Final EIS. Based on staff's independent analysis in the Supplemental EA, Commission approval of PG&E's proposal, as mitigated by the environmental measures discussed in the Supplemental EA, would not constitute a major federal action significantly affecting the quality of the human environment.

The supplemental EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–606) in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

All comments on the Supplemental EA must be filed by January 3, 2022. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–606–027.

For further information, contact Rebecca Martin by telephone at 202–502–6012 or by email at *Rebecca.Martin@ferc.gov.*

Dated: December 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26662 Filed 12–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–523–000]

Indra Power Business TX LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Indra Power Business TX LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 23, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26667 Filed 12–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL00–95–312; EL00–98–284.

Applicants: Investigation of Practices of the California Independent System Operator and the California Power Exchange, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillry Services*.

Description: Notice of the California Power Exchange re Defaulted Amounts Pursuant to the November 1, 2021 Market Clearing, etc.

Filed Date: 11/23/21.

Accession Number: 20211123–5233.

Comment Date: 5 p.m. ET 12/14/21.

Docket Numbers: EL22–19–000.

Applicants: Wabash Valley Power Association, Inc. v. *PJM Interconnection, L.L.C.* and Independent Market Monitor for PJM.

Description: Complaint, Wabash Valley Power Association, Inc.

Filed Date: 12/3/21.

Accession Number: 20211203–5063.

Comment Date: 5 p.m. ET 1/3/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2594–001.

Applicants: Vermont Transco LLC.

Description: Compliance filing: Supplemental Order No. 864 Compliance Filing Under the 1991 Vermont Transmission to be effective 1/1/2020.

Filed Date: 12/3/21.

Accession Number: 20211203–5161.

Comment Date: 5 p.m. ET 12/13/21.

Docket Numbers: ER21–1694–001.

Applicants: ISO New England Inc., Green Mountain Power Corporation.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: GMP; Docket No. ER21–1694—Amended Supplement to Order 864 Compliance Filings to be effective 1/1/2020.

Filed Date: 12/3/21.

Accession Number: 20211203–5132.

Comment Date: 5 p.m. ET 12/13/21.

Docket Numbers: ER21–1709–001.

Applicants: ISO New England Inc., Vermont Transco LLC.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: VTransco; Docket No. ER21–1709 Amended Supplemental Order 864 Compliance Filing to be effective 1/1/2020.

Filed Date: 12/3/21.

Accession Number: 20211203–5119.

Comment Date: 5 p.m. ET 12/13/21.

Docket Numbers: ER21–2423–002.

Applicants: Generation Bridge Connecticut Holdings, LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 7/15/2021.

Filed Date: 12/2/21.

Accession Number: 20211202–5238.

Comment Date: 5 p.m. ET 12/23/21.

Docket Numbers: ER21–2424–002.

Applicants: Generation Bridge M&M Holdings, LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 7/15/2021.

Filed Date: 12/2/21.

Accession Number: 20211202–5240.

Comment Date: 5 p.m. ET 12/23/21.

Docket Numbers: ER22–530–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 16 to be effective 2/1/2022.

Filed Date: 12/2/21.

Accession Number: 20211202–5244.

Comment Date: 5 p.m. ET 12/23/21.

Docket Numbers: ER22–531–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of FERC Rate Schedule No. 250 to be effective 1/31/2022.

Filed Date: 12/2/21.

Accession Number: 20211202–5250.

Comment Date: 5 p.m. ET 12/23/21.

Docket Numbers: ER22–532–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–12–03_SA 3223 Richland

Interconnection-MidAmerican 2nd Rev GIA (J535) to be effective 11/23/2021.

Filed Date: 12/3/21.

Accession Number: 20211203–5009.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–533–000.

Applicants: Wisconsin Power and Light Company.

Description: § 205(d) Rate Filing: WPL-Darien Solar Affected System FCA to be effective 2/1/2022.

Filed Date: 12/3/21.

Accession Number: 20211203–5031.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–534–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6228, Queue No. AF2–057 to be effective 11/3/2021.

Filed Date: 12/3/21.

Accession Number: 20211203–5068.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–535–000.

Applicants: American Electric Power Service Corporation, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits one Facilities Agreement re: ILDSA, SA No. 1336 to be effective 2/2/2022.

Filed Date: 12/3/21.

Accession Number: 20211203–5073.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–536–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: Ministerial filing to incorporate ER20–277 into Sagamore to be effective 12/1/2020.

Filed Date: 12/3/21.

Accession Number: 20211203–5076.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–537–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 323 1st Rev—LGIA with Judith Gap Energy LLC to be effective 12/6/2021.

Filed Date: 12/3/21.

Accession Number: 20211203–5077.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–538–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: OATT Service Agreement Nos. 490 and 491 to be effective 11/4/2021.

Filed Date: 12/3/21.

Accession Number: 20211203–5134.

Comment Date: 5 p.m. ET 12/27/21.

Docket Numbers: ER22–540–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2021–12–03 First Amendment to LGIA—Sun Stream Solar 2, SDG&E, & CAISO to be effective 2/2/2022.

Filed Date: 12/3/21.

Accession Number: 20211203–5171.

Comment Date: 5 p.m. ET 12/27/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26668 Filed 12–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–521–000]

Indra Power Business VA LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Indra Power Business VA LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 23, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26666 Filed 12–8–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2550–029]

Wiscons8, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.
b. *Project No.:* 2550–029.
c. *Date Filed:* August 26, 2021.
d. *Submitted By:* Wiscon8, LLC.
e. *Name of Project:* Weyauwega Hydroelectric Project.
f. *Location:* On the Waupaca River in Waupaca County, Wisconsin. No federal lands are occupied by the project works or located within the project boundary.
g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.
h. *Potential Applicant Contact:* Dwight Shanak, Wiscons8, LLC, N3311 Sunrise Lane, Waupaca, Wisconsin 54981; (715) 412–3150; email—*modernhydro@sbcglobal.net.*
i. *FERC Contact:* Shana Wiseman at (202) 502–8736; or email at *shana.wiseman@ferc.gov.*
j. Wiscons8, LLC filed its request to use the Traditional Licensing Process on August 26, 2021. Wiscons8, LLC provided public notice of its request on October 28, 2021. In a letter dated December 3, 2021, the Director of the Division of Hydropower Licensing approved Wiscons8, LLC's request to use the Traditional Licensing Process.
k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Wisconsin State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.
l. Wiscons8, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.
m. A copy of the PAD may be viewed and/or printed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).
n. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 2550–029. Pursuant to 18 CFR 16.8, 20 each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2024.
o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: December 3, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–26664 Filed 12–8–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2021–0762; FRL–9153–02–OLEM]

Draft EPA Strategy To Reduce Lead Exposures and Disparities in U.S. Communities; Comment Request; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public notification; correction.

SUMMARY: The Environmental Protection Agency (EPA), published a document in the **Federal Register** of October 28, 2021, notifying the public about the opportunity to provide comment on its draft Strategy to Reduce Lead Exposures and Disparities in U.S. Communities. Corrections have been made since the publishing for comment.

FOR FURTHER INFORMATION CONTACT: Stiven Foster, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1911; email address: *foster.stiven@epa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 28, 2021, in FR Doc 2021–23421, on page 59711, correct the **SUMMARY** and **DATES** sections to read as follows:

SUMMARY: The Environmental Protection Agency (EPA), published a document in the **Federal Register** of October 28, 2021, notifying the public about the opportunity to provide comment on its draft Strategy to Reduce Lead Exposures and Disparities in U.S. Communities. Corrections have been made since the publishing for comment. The corrected draft *Strategy to Reduce Lead Exposures and Disparities in U.S. Communities* (Lead Strategy) now includes actions due to the Infrastructure Investment and Jobs Act. The legislation provides opportunity to strengthen and rebuild America's water infrastructure, including replace lead service lines to further reduce lead exposures in communities. The EPA will conduct public listening sessions on the draft Lead Strategy. Details about the listening sessions will be posted at *https://www.epa.gov/lead/draft-strategy-reduce-lead-exposures-and-disparities-us-communities,* as they become available.

DATES: Comments must be submitted on or before March 16, 2022.

Dated: December 3, 2021.

Carlton Waterhouse,

Deputy Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2021–26644 Filed 12–8–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0492; FRL–9613–01–OCSPP]

United States Department of Justice and Parties to Certain Litigation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to the Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the U.S. Department of Justice (DOJ) and parties to certain litigation. This transfer of data is in

accordance with the CBI regulations governing the disclosure of potential CBI in litigation.

DATES: Access to this information by DOJ and the parties to certain litigation is ongoing and expected to continue during the litigation as discussed in this Notice.

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice is being provided pursuant to 40 CFR 2.209(d) to inform affected businesses that EPA, via DOJ, will provide certain information to the parties and the Court in the consolidated matters of *American Soybean Association* v. *U.S. Environmental Protection Agency et al.,* Case No. 20–1441 (D.C. Cir.) (''Dicamba Litigation''). The information is contained in documents that have been submitted to EPA pursuant to FIFRA and FFDCA by pesticide registrants or other data-submitters, including information that has been claimed to be, or determined to potentially contain, CBI. In the Dicamba Litigation, the Petitioner seeks judicial review of three EPA registration decisions for products that contain dicamba for use on dicamba-tolerant cotton and soybeans, issued under FIFRA, 7 U.S.C. 136 *et seq.*

The documents are being produced as part of the Administrative Record of the decision at issue and include documents that registrants or other data-submitters may have submitted to EPA regarding the pesticide dicamba, and that may be subject to various release restrictions under federal law. The information includes documents submitted with pesticide registration applications and may include CBI as well as scientific studies subject to the disclosure restrictions of FIFRA section 10(g), 7 U.S.C. 136h(g).

All documents that may be subject to release restrictions under federal law are designated as ''Protected Information'' under a Protective Order that was entered by the court in the Dicamba Litigation on November 4, 2021 (Doc. No. 1920892). The Protective Order precludes public disclosure of any such documents by the parties in this action who have received the information from EPA and limits the use of such documents to litigation purposes only. If filed with the Court, the Protective Order requires that such documents be filed under seal and not be available for public review.

(Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*)

Dated: November 22, 2021.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2021–26629 Filed 12–8–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MD Docket No. 20–270; FR ID 61142]

Schedule of Application Fees of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the effective date of new application fee rates for the Enforcement Bureau, Wireline Competition Bureau, and the International Bureau.

DATES: New application fee rates will be updated on December 15, 2021.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: The Commission adopted new application fee rates in a *Report and Order,* FCC 20–184, MD Docket No. 20–270, adopted on December 23, 2020, released on December 29, 2020, and published in the **Federal Register** on March 19, 2021 (86 FR 15026, March 19, 2021). This document provides notice that new application fee rates will become effective on December 15, 2021 for the Enforcement Bureau, Wireline Competition Bureau, and the International Bureau.

DA 21–1496

Released: December 15, 2021

Effective Date of New Application Fees for the Enforcement Bureau, Wireline Competition Bureau, and the International Bureau

MD Docket No. 20–270

On December 23, 2020, the Commission adopted a Report and Order implementing a new application fee schedule which significantly updated the Commission's previous fee schedule.[1] As indicated in the *2020 Application Fee Report and Order,* the new application fee rates will become effective when the Commission's ''information technology systems and internal procedures have been updated, and the Commission publishes notice(s) in the **Federal Register** announcing the effective date of such rules.'' [2] On July 6, 2021, the Commission announced that the systems and internal procedures had been updated for the Office of Engineering and Technology and for the Media Bureau, and as a result new application fees became effective for those Bureaus as of July 15, 2021.[3] This Public Notice announces that new application fee rates for the Wireline Competition Bureau (47 CFR 1.1105), the Enforcement Bureau (47 CFR 1.1106), International Bureau (47 CFR 1.1107), and CALEA Petitions (47 CFR 1.1109) will become effective on December 15, 2021.[4] Application fees for Enforcement Bureau applications and CALEA Petitions can be paid through the Commission's Registration System (CORES) (the Commission's FRN Management and Financial system),[5] International Bureau applications can be paid through IBFS (or through the CORES system as a back-up), and Wireline Competition applications can be paid through ETFS

[1] *See Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules,* MD Docket No, 20–270, Report and Order, 35 FCC Rcd 15089 (2020) (*2020 Application Fee Report and Order*). Pursuant to section 8(b)(1) of the Communications Act of 1934, as amended, the Commission is required to review application fees in every even-numbered year, adjust the fees to reflect increases or decreases in the Consumer Price Index, and round to the nearest $5 increment. *See* 47 U.S.C. 158(b)(1).

[2] *2020 Application Fee Report and Order* at 15155, para. 201.

[3] *Effective Date of New Application Fees for the Office of Engineering and Technology and the Media Bureau,* MD Docket No. 20–270, Public Notice, DA 21–747 (OMD 2021).

[4] *See* 47 CFR 1.1105 (Schedule of charges for applications and other filings for wireline competition services), 47 CFR 1.1106 (Schedule of charges for applications and other filings for Enforcement Bureau services), 47 CFR 1.1107 (Schedule of charges for applications and other filings for International Bureau services), and 47 CFR 1.1109 (Schedule of charges and filings for the Public Safety and Homeland Security Bureau). Applicants must continue to pay the current fees for their applications under the existing procedures until the new procedures and fees are in effect for their applications. The Commission will announce the effective date of the new application fee rates in 47 CFR 1.1102 of the Commission's rules once the applicable information technology systems and internal procedures have been updated for those fees. *See* 47 CFR 1.1102.

[5] Applicants can login at *https://apps.fcc.gov/cores/userLogin.do* using an existing FCC Username account, or through CORES' FRN access page at *https://apps.fcc.gov/cores/paymentFrnLogin.do.* On December 15, 2021, the URL that directly logs into Fee Filer will be discontinued, but will re-direct users to the new payment system (see *FCC Announces Decommissioning of Fee Filer as Method of Payment and Replacement with New Payment Module within CORES and Decommissioning of the Commission's Red Light Display System and Replacement with a New Module within CORES,* Public Notice, December 1, 2021).

(tariff filings), and the CORES system (section 214 and VoIP numbering applications).

For further information regarding this document, please contact Roland Helvajian, Program Analyst, Financial Operations, Office of the Managing Director, *Roland.Helvajian@fcc.gov.*

Marlene Dortch,

Secretary.

[FR Doc. 2021–26613 Filed 12–8–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, December 14, 2021 at 10:00 a.m. and its continuation at the conclusion of the open meeting on December 16, 2021.

PLACE: 1050 First Street NE, Washington, DC. (This meeting will be a virtual meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021–26788 Filed 12–7–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Resumption of In-Person Hearings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: Beginning on January 3, 3022, the Federal Mine Safety and Health Review Commission (the ''Commission'') is resuming in-person hearings in the manner described below until June 30, 2022, or until such earlier date determined by the Commission's Office of the Chief Administrative Law Judge (''OCALJ'') and published in a notice appearing in the **Federal Register** and posted on the Commission's website (*www.fmshrc.gov*).

DATES: Applicable: January 3, 2022.

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434–9935.

SUPPLEMENTARY INFORMATION: Commission Administrative Law Judges are committed to a high standard to protect the health and safety of all attorneys, representatives, parties, and witnesses who may appear before them, during the Coronavirus 2019 (COVID–19) pandemic, while continuing the agency's mission. On December 3, 2021, Commission Chief Administrative Law Judge Glynn F. Voisin issued an order which is posted on the Commission's website (*www.fmshrc.gov*). The contents of the order are set forth in this notice.

As of January 3, 2022, the Commission will resume in-person hearings, but for the duration of the Chief Judge's December 3 order, all hearings are subject to the following terms set forth in the order.

Commission Judges may, at their sole discretion, hold remote hearings (*e.g.* via Zoom) and require specific procedures to provide for safety. Commission Judges shall exercise this discretion within uniform parameters as set forth herein. Each Judge shall determine (1) when to use remote hearings in lieu of in-person hearings and (2) specific safety procedures to be used at an in-person hearing.

In determining use of a remote hearing, Judges will consider safety factors on a case-by-case basis. Judges also have the discretion to hold a hybrid hearing, that includes both in-person and video participation. Judges will ensure all parties appearing pro se who are required to participate in a remote hearing have access to equipment, an internet connection, and other appropriate technology. Prior to conducting an in-person hearing, Judges will schedule a conference call with the attorneys and representatives of each of the parties to discuss, among other things, safety considerations for the in-person hearing. Judges may discuss the agency's travel guidelines, protocols, and safety measures. Persons who are not comfortable with travel or appearing in person, may request to attend the hearing via remote access (*e.g.,* via Zoom).

The Judge will set a hearing location after considering the safety and health rules currently in place by the state and local public health entities. In choosing a courtroom, the Judge will take into consideration the rules and requirements of the court or hearing facility, as well as all applicable federal, state, and local regulations and guidelines. If the hearing is to be a hybrid hearing, the Judge will also consider the availability of internet and technology needs in the courtroom.

During the prehearing conference, the Judge will inform the parties of the federal, state, local and courtroom requirements and seek a commitment to adhere to those requirements. The requirements apply to all attorneys, assistants, parties, and witnesses. The discussion will also address who may enter the courtroom, when, and what safety measures, such as masks and social distancing, must be implemented. No person may enter the courtroom, or the witness room without the permission of the Judge.

Hearing participants are subject to the following vaccination requirements for attendance at in-person hearings:

- FMSHRC employees:
  - FMSHRC employees must be fully vaccinated by November 22, 2021, unless a legally required exemption applies. All FMSHRC employees must adhere to CDC guidance on social distancing and mask wearing.
- Visitors:
  - Visitors are federal employees from other agencies such as the Department of Labor, spectators, and press. Visitors must attest to their vaccination status using the Certificate of Vaccination form at *https://www.saferfederalworkforce.gov/downloads/CertificationVaccinationPRAv7.pdf.* The Judge shall not collect documentation to verify their attestation. Visitors who are not fully vaccinated shall show proof of a negative COVID–19 test result from a Food and Drug Administration authorized test taken within three days prior to entry to the in-person hearing. The Judge shall not collect documentation to verify COVID–19 test results. All visitors must adhere to CDC guidance on social distancing and mask wearing.
- Contractors:
  - Court reporters are contractors and must be fully vaccinated by January 18, 2022, unless a legally required exemption applies. All court reporters must adhere to CDC guidance on social distancing and mask wearing.
- Non-government Parties, Representatives and Witnesses:
  - Persons who are not federal government employees and who are parties, representatives of parties, or witnesses do not need to attest to their vaccination status to attend an in-person FMSHRC hearing and Judges shall not inquire into their vaccination status. All such persons must adhere to CDC guidance on social distancing and mask wearing.

The Judge may consider all factors, in totality, in determining if a remote hearing will be held and who may be present for the hearing. No single factor is dispositive. These procedures shall be in place until June 30, 2022 unless extended or modified by order.

(Authority: 30 U.S.C. 823; 29 CFR part 2700.)

Dated: December 3, 2021.

Sarah L. Stewart,

Deputy General Counsel, Federal Mine Safety and Health Review Commission.

[FR Doc. 2021–26620 Filed 12–8–21; 8:45 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 24, 2021.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org*:

1. *David R. Rounds, St. Louis Park, Minnesota, as trustee to the Gerald Rauenhorst 2004 Children's Trust u/a/d December 23, 2004, and the Grandchildren's Fidelity Trust u/a/d February 24, 2015, both of Minnetonka, Minnesota;* to acquire voting shares of Fidelity Holding Company, Minnetonka, Minnesota, and thereby indirectly acquire voting shares of Fidelity Bank, Edina, Minnesota.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Tamara S. Wagers, Mt. Zion, Illinois; the Arthur R. Wilkinson Trust, dated April 3, 2010, Arthur R. Wilkinson, as trustee, the Karen S. Wilkinson Trust, dated April 3, 2010, Karen S. Wilkinson, as trustee, and Michelle Wilkinson Gross, all of Bement, Illinois; and the George Mark Wilkinson Living Trust, dated April 24, 2009, George Mark Wilkinson, as trustee, both of Waikoloa, Hawaii;* to form the Wilkinson Family Control Group, a group acting in concert, and *The Ann Wilkinson Trust, Ann Wilkinson, individually, and as trustee, both of Mountain View, California;* to retain voting shares of Bement Bancshares, Inc., and thereby indirectly retain voting shares of the State Bank of Bement, Bement, Illinois, and the State Bank of Cerro Gordo, Cerro Gordo, Illinois.

Board of Governors of the Federal Reserve System, December 6, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–26689 Filed 12–8–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 10, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Fourth Capital Holdings, Inc., Nashville, Tennessee*; to become a bank holding company by acquiring Fourth Capital Bank, Nashville, Tennessee.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First internet Bancorp, Fishers, Indiana;* to acquire First Century Bancorp, Roswell, Georgia, and thereby indirectly acquire First Century Bank, N.A., Commerce, Georgia.

2. *First Merchants Corporation, Muncie, Indiana;* to merge with Level One Bancorp, Inc., and thereby indirectly acquire Level One Bank, both of Farmington Hills, Michigan.

Board of Governors of the Federal Reserve System, December 6, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–26694 Filed 12–8–21; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Emergency Medical Service/911 Workforce Infection Control and Prevention Issues

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Emergency Medical Service/911 Workforce Infection Control and Prevention Issues,* which is currently

being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before January 10, 2022.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Emergency Medical Service/911 Workforce Infection Control and Prevention Issues.* AHRQ is conducting this technical brief pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Emergency Medical Service/911 Workforce Infection Control and Prevention Issues,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/ems-911-workforce-infection-control/protocol.*

This is to notify the public that the EPC Program would find the following information on *Emergency Medical Service/911 Workforce Infection Control and Prevention Issues* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The technical brief will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Guiding Questions

1. What are the characteristics, incidence, prevalence, and severity of occupationally-acquired exposures to infectious diseases for the EMS/911 workforce?

a. How do the incidence, prevalence, and severity of exposures vary by *demographic characteristics* (*e.g.,* age, sex, race, ethnicity) of the workforce?

b. How do the incidence, prevalence, and severity of exposures vary by *workforce characteristics* (*e.g.,* training, experience, level of practice, geographic region)?

2. What are the characteristics and reported effectiveness (*i.e.,* benefits and harms) in studies of EMS/911 workforce practices to prevent infectious diseases?

a. How do workforce practices to prevent infectious diseases vary by *demographic characteristics* (*e.g.,* age, sex, race, ethnicity)?

b. How do workforce practices to prevent infectious diseases vary by *workforce characteristics* (*e.g.,* training, experience, geographic region etc.)?

c. How do workforce practices to prevent infectious diseases *vary by practice characteristics* (*e.g.,* training, personal protective equipment (PPE), personnel, and budget requirements)?

d. What is the *reported effectiveness* (*i.e.* benefits and harms) in studies of EMS/911 workforce practices to prevent infectious diseases? (Outcomes of interest include but are not limited to, incidence, prevalence, duration, severity, missed work, healthcare utilization, separation from the workforce, disability, and death from infections.)

3. What are the characteristics and reported effectiveness (*i.e.,* benefits and harms) in studies of EMS/911 workforce practices to recognize and control (*e.g.,* chemoprophylaxis, but excluding treatment) infectious diseases?

a. How do workforce practices to recognize and control infectious diseases vary by *demographic characteristics* (*e.g.,* age, sex, race, ethnicity) of the EMS/911 workforce?

b. How do workforce practices to recognize and control infectious diseases vary by *workforce characteristics* (*e.g.,* training, experience, level of practice, geographic region)?

c. How do workforce practices to recognize and control infectious diseases vary by *infection recognition and control practice characteristics* (*e.g.,* training, PPE, personnel, and budget requirements)?

d. What is the *reported effectiveness* (*i.e.,* benefits and harms) in studies of EMS/911 workforce practices to recognize and control infectious disease? (Outcomes of interest include but are not limited to, incidence, prevalence, duration, severity, missed work, healthcare utilization, separation from the workforce, disability, and death from infections.)

4. What are the context and implementation factors of studies with effective EMS/911 workforce practices to prevent, recognize and treat occupationally-acquired infectious diseases? This description might include distinguishing factors such as workforce training, surveillance, protective equipment, pre- and post-exposure prophylaxis, occupational health services, preparedness for emerging infectious diseases, and program funding.

5. What future research is needed to close existing evidence gaps regarding preventing, recognizing, and treating occupationally-acquired infectious diseases in the EMS/911 workforce?

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTINGS)

	Inclusion criteria	Exclusion criteria
Population	• Emergency medical service workforce including 911 dispatchers exposed to or at risk of exposure to an occupationally-acquired infectious disease as contact exposure, respiratory exposure, or blood-borne exposure.*	• Fire fighters and police personnel not involved in medical care.
Intervention	• One or more of the following types of interventions: ○ Training or education. ○ PPE protocols. ○ Personnel policies. ○ Budget allocations. ○ Vaccines. ○ Equipment.	• NA.
Comparison	• Any comparison group (for studies that evaluate the effectiveness of an EMS/911 workforce practice).	• Studies without a comparison group (for studies that evaluate the effectiveness of an EMS/911 workforce practice).
Outcomes	• Incidence • Prevalence. • Duration. • Severity. • Missed work. • Healthcare utilization. • Separation from the workforce. • Disability. • Death from infections.	• NA.
Timing	• Published after 2006 and includes data after 2006.	
Setting	• Conducted in the United States	• Military exercises and drills. • Live evacuations from another country.
Study design	• Experimental and non-experimental studies with comparison groups, including pre-post studies. • Relevant systematic reviews.	• No original data (Narrative reviews, commentaries, simulation studies).

* Organisms of interest included but are not limited to SARS–COV2, influenza, tuberculosis, HIV, and Hepatitis B and C.

Dated: December 3, 2021.

Marquita Cullom,

Associate Director.

[FR Doc. 2021–26630 Filed 12–8–21; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0373]

Tobacco Product User Fees: Responses to Frequently Asked Questions; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled ''Tobacco Product User Fees: Responses to Frequently Asked Questions.'' This guidance provides information in response to frequently asked questions related to tobacco product user fees assessed and collected under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: The announcement of the guidance is published in the **Federal Register** on December 9, 2021.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0373 for ''Tobacco Product User Fees: Responses to Frequently Asked Questions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Paul Hart, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Tobacco Product User Fees: Responses to Frequently Asked Questions.'' This guidance provides information in response to frequently asked questions related to tobacco product user fees assessed and collected under section 919 of the FD&C Act (21 U.S.C. 387s). In particular, this guidance provides information regarding the submission of information needed to assess user fees owed by each domestic manufacturer or importer of tobacco products and how FDA determines whether a company owes user fees in each quarterly assessment.

The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) was enacted on June 22, 2009 (Pub. L. 111–31), amending the FD&C Act and providing FDA with the authority to regulate tobacco products. Included in the Tobacco Control Act is the requirement that FDA assess and collect user fees. Section 919(a) of the FD&C Act requires FDA, in accordance with that section, to ''assess user fees on, and collect such fees from, each manufacturer and importer of tobacco products'' subject to the tobacco product provisions of the FD&C Act (chapter IX of the FD&C Act). Under the calculations required by section 919 of the FD&C Act, the tobacco products that are subject to user fee assessments are cigarettes, snuff, chewing tobacco, roll-your-own tobacco, cigars, and pipe tobacco. The total amount of user fees for each fiscal year is specified in section 919(b)(1) of the FD&C Act, and, under section 919(a), FDA is to assess and collect one-fourth of that total each quarter of the fiscal year. The FD&C Act provides for the total quarterly assessment to be allocated among specified classes of tobacco products. The class allocation is based on each tobacco product class' volume of tobacco products removed into commerce. Within each class of tobacco products, an individual domestic manufacturer or importer is assessed a user fee based on its market share for that tobacco product class.

In the **Federal Register** of May 31, 2013 (78 FR 32581), FDA issued a notice of proposed rulemaking to add 21 CFR part 1150 to require domestic tobacco product manufacturers and importers to submit to FDA information needed to calculate the amount of user fees to assess each domestic manufacturer and importer under the FD&C Act. In the **Federal Register** of July 10, 2014 (79 FR 39302), FDA finalized portions of the User Fee proposed rule related to cigarettes, snuff, chewing tobacco, and roll-your-own tobacco, which is codified at 21 CFR part 1150. In the **Federal Register** of May 10, 2016 (81 FR 28707), FDA finalized a rule that requires domestic manufacturers and importers of cigars and pipe tobacco to submit information needed to calculate the amount of user fees assessed under the FD&C Act. In the **Federal Register** of May 27, 2021 (86 FR 28604), we published the notice of availability for the draft guidance ''Tobacco Product User Fees: Responses to Frequently Asked Questions.'' On July 26, 2021, the comment period closed with no comments having been received. We are now finalizing the guidance with no substantive changes.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on frequently asked questions about tobacco product user fees set forth in the guidance. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 1150 have been approved under 0910–0749.

III. Electronic Access

Persons with access to the internet may obtain an electronic version of the guidance at either *https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/TobaccoProducts/Labeling/RulesRegulationsGuidance/default.htm,* or *https://www.regulations.gov.*

Dated: December 3, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26651 Filed 12–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1214]

Considerations for the Use of Real-World Data and Real-World Evidence To Support Regulatory Decision-Making for Drug and Biological Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Considerations for the Use of Real-World Data and Real-World Evidence to Support Regulatory Decision-Making for Drug and Biological Products.'' FDA is issuing this guidance as part of its Real-World Evidence (RWE) Program and to satisfy, in part, the mandate under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to issue guidance about the use of RWE in regulatory decision making. FDA created a framework to evaluate the potential use of RWE to help support the approval of a new indication for a drug already approved under the FD&C Act or to help to support or satisfy postapproval study requirements. This guidance discusses the applicability of FDA's investigational new drug application (IND) regulations to various clinical study designs that utilize real-world data (RWD), and clarifies the Agency's expectations regarding clinical studies using RWD submitted to FDA in support of a regulatory decision regarding the effectiveness or safety of a drug (*e.g.,* as part of a new drug application or a biologics license application) that are not subject to the IND regulations.

DATES: Submit either electronic or written comments on the draft guidance by March 9, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1214 for ''Considerations for the Use of Real-World Data and Real-World Evidence to Support Regulatory Decision-Making for Drug and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993–0002, 301–796–3161, *Dianne.Paraoan@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *Stephen.Ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Considerations for the Use of Real-World Data and Real-World Evidence to Support Regulatory Decision-Making for Drug and Biological Products.'' The draft guidance discusses the following major topics: (1) Applicability of part 312 (21 CFR part 312) to studies using RWD and (2) regulatory considerations for non-interventional (observational) studies using RWD. Topics covered under regulatory considerations include the following: (1) Transparency for data collection and analysis, (2) data access, (3) study monitoring, (4) safety reporting, and (5) sponsor responsibilities.

Section 3022 of the 21st Century Cures Act (Cures Act) amended the FD&C Act to add section 505F, Utilizing Real World Evidence (21 U.S.C. 355g). This section requires the establishment of a program to evaluate the potential use of RWE to help support the approval of a new indication for a drug approved under section 505(c) of the FD&C Act (21 U.S.C. 355(c)) and to help support or satisfy postapproval study requirements. This section also requires that FDA utilize the program to inform guidance for industry on the circumstances under which sponsors of drugs may rely on RWE and the appropriate standards and methodologies for collection and analysis of RWE submitted to evaluate the potential use of RWE for those purposes. Further, under the Prescription Drug User Fee Amendments of 2017 (PDUFA VI), FDA is committed to publishing draft guidance on how RWE can contribute to the assessment of safety and effectiveness in regulatory submissions. FDA is issuing the draft guidance entitled ''Considerations for the Use of Real-World Data and Real-World Evidence to Support Regulatory Decision-Making for Drug and Biological Products'' as part of a series of guidance documents to satisfy the Cures Act mandate and the PDUFA VI commitment.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Considerations for the Use of Real-World Data and Real-World Evidence to Support Regulatory Decision-Making for Drug and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303. The collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130. The collections of information in 21 CFR part 54 have been approved under OMB control number 0910–0396. The collections of information in 21 CFR part 310 have been approved under OMB control number 0910–0230. The collections of information in 21 CFR parts 310, 314, and 600 have been approved under OMB control number 0910–0645. The collections of information in 21 CFR parts 310, 314, and 600 have been approved under OMB control number 0910–0291. The collections of information in part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 600 have been approved under OMB control number 0910–0458. The collections of information in FDA's guidance for industry entitled ''Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring'' have been approved under OMB control number 0910–0733. The collections of information in FDA's guidance for industry entitled ''Formal Meetings with Sponsors and Applicants for PDUFA Products'' have been approved under OMB control number 0910–0429.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 2, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26640 Filed 12–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 056

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 056'' (Recognition List Number: 056), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit either electronic or written comments on the notice at any time. These modifications to the list of recognized standards are applicable December 9, 2021.

ADDRESSES: You may submit comments on the current list of FDA Recognized Consensus Standards at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2004–N–0451 for ''Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 056.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 056.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

An electronic copy of Recognition List Number: 056 is available on the internet at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section IV for electronic access to the searchable database for the current list of FDA-recognized consensus standards, including Recognition List Number: 056 modifications and other standards-related information. Submit written requests for a single hard copy of the document entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 056'' to Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5606, Silver Spring, MD 20993, 301–796–6287. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8144.

FOR FURTHER INFORMATION CONTACT: Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5606, Silver Spring, MD 20993, 301–796–6287, *CDRHStandardsStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In the **Federal Register** of September 14, 2018 (83 FR 46738), FDA announced the availability of a guidance entitled ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices.'' The guidance describes how FDA has implemented its standards recognition program and is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/appropriate-use-voluntary-consensus-standards-premarket-submissions-medical-devices.* Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/federal-register-documents.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains on its website hypertext markup language (HTML) and portable document format (PDF) versions of the list of FDA Recognized Consensus Standards, available at *https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/federal-register-documents.* Additional information on the Agency's Standards and Conformity Assessment Program is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/standards-and-conformity-assessment-program.*

II. Modifications to the List of Recognized Standards, Recognition List Number: 056

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency is recognizing for use in premarket submissions and other requirements for devices. FDA is incorporating these modifications to the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA is using the term ''Recognition List

Number: 056'' to identify the current modifications.

In table 1, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, if applicable; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, FDA lists modifications the Agency is making that involve new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 056.

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
A. Anesthesiology			
1–115	1–151	ISO 80601–2–70 Second edition 2020–11 Medical electrical equipment—Part 2–70: Particular requirements for the basic safety and essential performance of sleep apnea breathing therapy equipment.	Withdrawn and replaced with newer version.
B. Biocompatibility			
2–191	2–289	ISO 10993–12 Fifth edition 2021–01 Biological evaluation of medical devices—Part 12: Sample preparation and reference materials.	Withdrawn and replaced with newer version.
2–241		ISO/TR 37137 First edition 2014–05–15 Cardiovascular biological evaluation of medical devices—Guidance for absorbable implants.	Withdrawn. See 2–290.
C. Cardiovascular			
3–92	3–170	ISO 14708–5 Second edition 2020–05 Implants for surgery—Active implantable medical devices—Part 5: Circulatory support devices.	Withdrawn and replaced with newer version.
3–129		ANSI/AAMI EC53:2013/(R)2020 ECG trunk cables and patient leadwires.	Extent of recognition.
3–166		ISO 81060–2 Third edition 2018–11 Noninvasive sphygmomanometers—Part 2: Clinical investigation of intermittent automated measurement type [Including: Amendment 1 (2020)].	Extent of recognition.
3–168		IEEE Std 1708–2014 Standard for Wearable, Cuffless Blood Pressure Measuring Devices [Including: Amendment 1 (2019)].	Extent of recognition.
D. Dental/Ear, Nose, and Throat (ENT)			
4–105		ANSI/ADA Standard No. 75—1997 (R2014) Resilient Lining Materials for Removable Dentures, Part 1: Short-Term Materials.	Withdrawn.
4–164	4–273	ANSI/ASA S3.7–2016 (Reaffirmed 2020) American National Standard Method for Measurement and Calibration of Earphones.	Withdrawn and replaced with newer version.
4–183	4–274	ANSI/ASA S3.2–2020 American National Standard Method for Measuring the Intelligibility of Speech over Communication Systems.	Withdrawn and replaced with newer version.
4–194		ANSI/ADA Standard No. 78—2006 Dental obturating cones (Modified adoption of ISO 6877–1:1995, Dental obturating points).	Withdrawn.
4–195		ISO 14801 Second edition 2007–11–15 Dentistry—Implants—Dynamic fatigue test for endosseous dental implants.	Withdrawn.
4–203	4–275	ANSI/ASA S3.6–2018 American National Standard Specification for Audiometers.	Withdrawn and replaced with newer version.
4–206	4–276	ISO 14457 Second edition 2017–10 Dentistry—Handpieces and motors.	Withdrawn and replaced with newer version.
4–216	4–277	ANSI/IEEE C63.19–2019 American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids.	Withdrawn and replaced with newer version.
4–225	4–278	ISO 4823 Fifth edition 2021–02 Dentistry—Elastomeric impression and bite registration materials.	Withdrawn and replaced with newer version.
E. General I (Quality Systems/Risk Management) (QS/RM)			
No new entries at this time.			
F. General II (Electrical Safety/Electromagnetic Compatibility) (ES/EMC)			
19–23	19–40	IEC 60086–4 Edition 5.0 2019–04 Primary batteries—Part 4: Safety of lithium batteries [Including: Corrigendum 1 (2019) and Corrigendum 2 (2020)].	Withdrawn and replaced with newer version.

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
G. General Hospital/General Plastic Surgery (GH/GPS)			
6–385	6–461	IEC 60601–2–19 Edition 3.0 2020–09 Medical electrical equipment—Part 2–19: Particular requirements for the basic safety and essential performance of infant incubators.	Withdrawn and replaced with newer version.
6–386	6–462	IEC 60601–2–20 Edition 3.0 2020–09 Medical electrical equipment—Part 2–20: Particular requirements for the basic safety and essential performance of infant transport incubators.	Withdrawn and replaced with newer version.
6–388	6–463	IEC 60601–2–21 Edition 3.0 2020–09 Medical electrical equipment—Part 2–21: Particular requirements for the basic safety and essential performance of infant radiant warmers.	Withdrawn and replaced with newer version.
6–389		IEC 60601–2–2 Edition 6.0 2017–03 Medical electrical equipment—Part 2–2: Particular requirements for the basic safety and essential performance of high frequency surgical equipment and high frequency surgical accessories.	Extent of recognition.
H. In Vitro Diagnostics (IVD)			
7–193	7–306	CLSI EP06 2nd Edition Evaluation of the Linearity of Quantitative Measurement Procedures.	Withdrawn and replaced with newer version.
7–209	7–307	CLSI POCT05 2nd Edition Performance Metrics for Continuous Interstitial Glucose Monitoring.	Withdrawn and replaced with newer version.
7–236		CLSI M43–A October 2011 Methods for Antimicrobial Susceptibility Testing for Human Mycoplasmas; Approved Guideline.	Extent of recognition.
7–262		CLSI M45 3rd Edition Methods for Antimicrobial Dilution and Disk Susceptibility Testing of Infrequently Isolated or Fastidious Bacteria.	Extent of recognition.
7–292		CLSI M62 1st Edition Performance Standards for Susceptibility Testing of Mycobacteria, Nocardia spp., and Other Aerobic Actinomycetes.	Extent of recognition.
7–294	7–308	CLSI M100 31st Edition Performance Standards for Antimicrobial Susceptibility Testing.	Withdrawn and replaced with newer version.
I. Materials			
8–394	8–555	ASTM F1472–20a Standard Specification for Wrought Titanium-6Aluminum-4Vanadium Alloy for Surgical Implant Applications (UNS R56400).	Withdrawn and replaced with newer version.
8–418	8–556	ASTM F640–20 Standard Test Methods for Determining Radiopacity for Medical Use.	Withdrawn and replaced with newer version.
8–445		ISO 17296–4 First edition 2014–09–01 Additive manufacturing—General principles—Part 4: Overview of data processing.	Withdrawn. See 8–561.
8–486	8–557	ASTM F3268—18a Standard Guide for in vitro Degradation Testing of Absorbable Metals.	Withdrawn and replaced with newer version.
8–490		ASTM F3303–18 Standard for additive manufacturing—Process characteristics and performance—Practice for metal powder bed fusion process to meet critical applications.	Withdrawn. See 8–562.
J. Nanotechnology			
No new entries at this time.			
K. Neurology			
No new entries at this time.			
L. Obstetrics-Gynecology/Gastroenterology/Urology (OB-Gyn/G/Urology)			
9–39	9–131	ISO 8600–5 Second Edition 2020–10 Optics and photonics—Medical endoscopes and endotherapy devices—Part 5: Determination of optical resolution of rigid endoscopes with optics.	Withdrawn and replaced with newer version.
9–44	9–132	ASTM F623–19 Standard Performance Specification for Foley Catheter.	Withdrawn and replaced with newer version.
9–53		ASTM F1992–99 (Reapproved 2007) Standard Practice for Reprocessing of Reusable, Heat-Stable Endoscopic Accessory Instruments (EAI) Used with Flexible Endoscopes.	Withdrawn.
9–95		CENEN 1615:2000 Enteral Feeding Catheters and Enteral Giving Sets for Single Use and their Connectors-Design and Testing.	Withdrawn. See 9–138.
9–97		ISO 13958 Third edition 2014–04–01 Concentrates for haemodialysis and related therapies.	Withdrawn. See 9–136.

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
9–98		ISO 13959 Third edition 2014–04–01 Water for haemodialysis and related therapies.	Withdrawn. See 9–135.
9–99		ISO 23500 Second edition 2014–04–01 Guidance for the preparation and quality management of fluids for haemodialysis and related therapies.	Withdrawn. See 9–133.
9–100		ISO 11663 Second edition 2014–04–01 Quality of dialysis fluid for haemodialysis and related therapies.	Withdrawn. See 9–137.
9–101		ISO 26722 Second edition 2014–04–01 Water treatment equipment for haemodialysis applications and related therapies.	Withdrawn. See 9–134.
9–113		CENEN 1618:1997 Catheters other than intravascular catheters—Test methods for common properties.	Withdrawn. See 9–138.
		M. Ophthalmic	
10–35	10–122	ISO 10939 Third edition 2017–05 Ophthalmic instruments—Slit-lamp microscopes.	Withdrawn and replaced with newer version.
10–72	10–123	ISO 15004–1 Second edition 2020–5 Ophthalmic instruments—Fundamental requirements and test methods—Part 1: General requirements applicable to all ophthalmic instruments.	Withdrawn and replaced with newer version.
10–79	10–124	ISO 11979–1 Fourth edition 2018–11 Ophthalmic implants—Intraocular lenses—Part 1: Vocabulary.	Withdrawn and replaced with newer version.
10–81	10–125	ISO 11979–7 Fourth edition 2018–03 Ophthalmic implants—Intraocular lenses—Part 7: Clinical investigations of intraocular lenses for the correction of aphakia.	Withdrawn and replaced with newer version.
10–90		ISO 11979–9 First edition 2006–09–01 Ophthalmic implants—Intraocular lenses—Part 9: Multifocal intraocular lenses [Including: Amendment 1 (2014)].	Withdrawn.
		N. Orthopedic	
11–238	11–376	ASTM F2033–20 Standard Specification for Total Hip Joint Prosthesis and Hip Endoprosthesis Bearing Surfaces Made of Metallic, Ceramic, and Polymeric Materials.	Withdrawn and replaced with newer version.
11–258	11–377	ASTM F2083–21 Standard Specification for Knee Replacement Prosthesis.	Withdrawn and replaced with newer version.
11–270	11–378	ASTM F2502–17 Standard Specification and Test Methods for Absorbable Plates and Screws for Internal Fixation Implants.	Withdrawn and replaced with newer version.
11–285	11–379	ASTM F2978–20 Standards Guide to Optimize Scan Sequences for Clinical Diagnostic Evaluation of Metal-on-Metal Hip Arthroplasty Devices using Magnetic Resonance Imaging.	Withdrawn and replaced with newer version.
11–286	11–380	ASTM F2979–20 Standard Guide for Characterization of Wear from the Articulating Surfaces in Retrieved Metal-on-Metal and other Hard-on-Hard Hip Prostheses.	Withdrawn and replaced with newer version.
11–293	11–381	ASTM F2582–20 Standard Test Method for Dynamic Impingement Between Femoral and Acetabular Hip Components.	Withdrawn and replaced with newer version.
		O. Physical Medicine	
		No new entries at this time.	
		P. Radiology	
12–260	12–335	IEC 60336 Edition 5.0 2020–12 Medical electrical equipment—X-ray tube assemblies for medical diagnosis—Focal spot dimensions and related characteristics.	Withdrawn and replaced with newer version.
12–269	12–336	IEC 60601–1–3 Edition 2.2 2021–01 CONSOLIDATED VERSION Medical electrical equipment—Part 1–3: General requirements for basic safety and essential performance—Collateral Standard: Radiation protection in diagnostic X-ray equipment.	Withdrawn and replaced with newer version.
12–284	12–337	NEMA NU 1–2018 Performance Measurements of Gamma Cameras.	Withdrawn and replaced with newer version.
12–285	12–338	IEC 60601–2–1 Edition 4.0 2020–10 Medical electrical equipment—Part 2–1: Particular requirements for the basic safety and essential performance of electron accelerators in the range 1 MeV to 50 MeV.	Withdrawn and replaced with newer version.
12–310	12–339	IEC 60601–2–63 Edition 1.2 2021–05 CONSOLIDATED VERSION Medical electrical equipment—Part 2–63: Particular requirements for the basic safety and essential performance of dental extra-oral X-ray equipment.	Withdrawn and replaced with newer version.

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
12–311	12–340	IEC 60601–2–65 Edition 1.2 2021–05 CONSOLIDATED VERSION Medical electrical equipment—Part 2–65: Particular requirements for the basic safety and essential performance of dental intra-oral X-ray equipment.	Withdrawn and replaced with newer version.
Q. Software/Informatics			
No new entries at this time.			
R. Sterility			
14–511	14–562	ANSI/AAMI ST79:2017 & 2020 Amendments A1, A2, A3, A4 (Consolidated Text) Comprehensive guide to steam sterilization and sterility assurance in health care facilities.	Withdrawn and replaced with newer version.
S. Tissue Engineering			
15–10		ASTM F2451–05 (Reapproved 2010) Standard Guide for in vivo Assessment of Implantable Devices Intended to Repair or Regenerate Articular Cartilage.	Withdrawn.
15–32	15–66	ASTM F2260–18 Standard Test Method for Determining Degree of Deacetylation in Chitosan Salts by Proton Nuclear Magnetic Resonance (1HNMR) Spectroscopy.	Withdrawn and replaced with newer version.
15–60	15–67	ASTM F2212–20 Standard Guide for Characterization of Type I Collagen as Starting Materials for Surgical Implants and Substrates for Tissue Engineered Medical Products (TEMPs).	Withdrawn and replaced with newer version.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 056. These entries are of standards not previously recognized by FDA.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
A. Anesthesiology		
No new entries at this time.		
B. Biocompatibility		
2–290	Biological evaluation of absorbable medical devices—Part 1: General requirements.	ISO/TS 37137–1 First edition 2021–03.
2–291	Biological evaluation of medical devices—Part 23: Tests for irritation	ISO 10993–23 First edition 2021–01.
C. Cardiovascular		
No new entries at this time		
D. Dental/Ear, Nose, and Throat (ENT)		
4–279	Part 1: Disposable Prophy Angles	ANSI/ADA Standard No. 85–2004 (R2009).
4–280	Fluoride Varnishes	ANSI/ADA Standard No. 117–2018.
4–281.	Dentistry—Shanks for rotary and oscillating instruments	ISO 1797 Third edition 2017–05.
4–282	Dentistry—Denture adhesives	ISO 10873 First edition 2010–09.
4–283	Dentistry—Oral care products—Manual interdental brushes	ISO 16409 Second edition 2016–10.
E. General I (Quality Systems/Risk Management) (QS/RM)		
No new entries at this time.		
F. General II (Electrical Safety/Electromagnetic Compatibility) (ES/EMC)		
No new entries at this time.		
G. General Hospital/General Plastic Surgery (GH/GPS)		
6–460	Standard Specification for Barrier Face Coverings	ASTM F3502–21.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
	H. In Vitro Diagnostics (IVD)	
	No new entries at this time.	
	I. Materials	
8–558	Standard Specification for Chopped Carbon Fiber Reinforced (CFR) Polyetheretherketone (PEEK) Polymers for Surgical Implant Applications.	ASTM F3333–20.
8–559	Standard Test Methods for Vulcanized Rubber and Thermoplastic Elastomers—Tension.	ASTM D412–16e1.
8–560	Standard Test Method for Rubber Property—International Hardness	ASTM D1415–18.
8–561	Additive manufacturing—General principles—Overview of data processing	ISO/ASTM 52950 First edition 2021–01.
8–562	Additive manufacturing—Process characteristics and performance—Practice for metal powder bed fusion process to meet critical applications.	ISO/ASTM 52904 First edition 2019–08.
	J. Nanotechnology	
	No new entries at this time.	
	K. Neurology	
	No new entries at this time.	
	L. Obstetrics-Gynecology/Gastroenterology/Urology (OB-Gyn/G/Urology)	
9–133	Preparation and quality management of fluids for haemodialysis and related therapies—Part 1: General requirements.	ISO 23500–1 First edition 2019–02.
9–134	Preparation and quality management of fluids for haemodialysis and related therapies—Part 2: Water treatment equipment for haemodialysis applications and related therapies.	ISO 23500–2 First edition 2019–02.
9–135	Preparation and quality management of fluids for haemodialysis and related therapies—Part 3: Water for haemodialysis and related therapies.	ISO 23500–3 First edition 2019–02.
9–136	Preparation and quality management of fluids for haemodialysis and related therapies—Part 4: Concentrates for haemodialysis and related therapies.	ISO 23500–4 First edition 2019–02.
9–137	Preparation and quality management of fluids for haemodialysis and related therapies—Part 5: Quality of dialysis fluid for haemodialysis and related therapies.	ISO 23500–5 First edition 2019–02.
9–138	Enteral feeding systems—Design and testing	ISO 20695 First edition 2020–03.
	M. Ophthalmic	
10–126	Medical electrical equipment—Part 2–58: Particular requirements for basic safety and essential performance of lens removal devices and vitrectomy devices for ophthalmic surgery [Including AMENDMENT 1 (2016)].	IEC 80601–2–58 Edition 2.0 2014–09.
	N. Orthopedic	
11–382	Standard Test Method for Fatigue Testing of Acetabular Devices for Total Hip Replacement.	ASTM F3090–20.
11–383	Standard Test Method for Determination of Frictional Torque and Friction Factor for Hip Replacement Bearings under Standard Conditions Using a Reciprocal Friction Simulator.	ASTM F3143–20.
11–384	Standard Test Method for Determination of Frictional Torque and Friction Factor for Hip Implants Using an Anatomical Motion Hip Simulator.	ASTM F3446–20.
	O. Physical Medicine	
16–231	Prosthetics—Structural testing of lower-limb prostheses—Requirements and test methods.	ISO 10328 Second edition 2016–06–01.
	P. Radiology	
	No new entries at this time.	
	Q. Software/Informatics	
13–117	Health informatics—Device interoperability Part 40101: Foundational—Cybersecurity—Processes for vulnerability assessment.	IEEE Std 11073–40101–2020.
13–118	Health informatics—Device interoperability Part 40102: Foundational—Cybersecurity—Capabilities for mitigation.	IEEE Std 11073–40102–2020.
13–119	Security for industrial automation and control systems Part 4–1: Product security development life-cycle requirements..	ANSI/ISA–62443–4–1–2018.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
	R. Sterility	
	No new entries at this time.	
	S. Tissue Engineering	
	No new entries at this time.	

[1] All standard titles in this table conform to the style requirements of the respective organizations

IV. List of Recognized Standards

FDA maintains the current list of FDA Recognized Consensus Standards in a searchable database that may be accessed at *https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* Such standards are those that FDA has recognized by notice published in the **Federal Register** or that FDA has decided to recognize but for which recognition is pending (because a periodic notice has not yet appeared in the **Federal Register**). FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *CDRHStandardsStaff@fda.hhs.gov.* To be considered, such recommendations should contain, at a minimum, the information available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/standards-and-conformity-assessment-program#process.*

Dated: December 3, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26635 Filed 12–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0125]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection aspects of the Guidance for Industry on Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007.

DATES: Submit either electronic or written comments on the collection of information by February 7, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 7, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 7, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–D–0125 for ''Guidance for Industry on Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential

Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007

OMB Control Number 0910–0775—Extension

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was signed into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding, among other things, a chapter granting FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 201(rr) of the FD&C Act (21 U.S.C. 321(rr)), as amended, defines a tobacco product as any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). Section 910 of the FD&C Act (21 U.S.C. 387j) sets out premarket requirements for new tobacco products. The term new tobacco product is defined as any tobacco product (including those products in test markets) that was not commercially marketed in the United States as of February 15, 2007, or any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery, or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007 (section 910(a)(1) of the FD&C Act).

The Tobacco Control Act also gave FDA the authority to issue a regulation deeming all other products that meet the statutory definition of a tobacco product to be subject to chapter IX of the FD&C Act (section 901(b) (21 U.S.C. 387a(b)) of the FD&C Act). On May 10, 2016, FDA issued that rule, extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah, pipe tobacco, nicotine gels, and dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974 at 28976).

FDA refers to tobacco products that were commercially marketed (including those products in test markets) in the United States as of February 15, 2007, as Pre-Existing tobacco products.[1] Pre-Existing tobacco products are not considered new tobacco products and are not subject to the premarket requirements of section 910 of the FD&C Act. The guidance document associated with this information collection entitled ''Establishing That a Tobacco Product Was Commercially Marketed in the United States as of February 15, 2007 (*https://www.fda.gov/regulatory-information/search-fda-guidance-documents/establishing-tobacco-product-was-commercially-marketed-united-states-february-15-2007*), provides information on how a manufacturer may establish that a tobacco product was commercially marketed in the United States as of February 15, 2007. A Pre-Existing tobacco product (except such products exclusively in test markets) may also serve as the predicate tobacco product in a section 905(j) report (intended to be used toward demonstrating substantial

[1] FDA changed the term from ''grandfathered tobacco product'' to ''Pre-Existing tobacco product'' in the recently published final SE (86 FR 55224) and PMTA (86 FR 55300) rules because it more appropriately describes these products by using the more precise ''Pre-Existing'' in place of ''grandfathered.''

equivalence) for a new tobacco product (section 905(j)(1)A)(i) of the FD&C Act (21 U.S.C. 387e(j)(1)(A)(i))).

The guidance recommends that the manufacturer submit information adequate to demonstrate that the tobacco product was commercially marketed in the United States as of February 15, 2007. Examples of such information may include, but are not limited to, the following: Dated copies of advertisements, dated catalog pages, dated promotional material, and dated bills of lading.

FDA estimates the burden of this collection of information as follows:

Activity	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Submit evidence of commercial marketing in the United States as of February 15, 2007	1,000	1	1,000	5	5,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the number of respondents is based on the fact that requesting an Agency determination of the Pre-Existing status of a tobacco product under the guidance is not required and also on the number of Pre-Existing tobacco product submissions received from 2011 to October 2021. For deemed products that met the definition of a new tobacco product and were on the market as of August 8, 2016 (when the deeming rule took effect), FDA issued a compliance policy; this, in effect, provided more time for manufacturers of these products to submit their applications for marketing authorization. The deadline for the submission of applications for these products has now passed. As the result of a court order (and a subsequent extension due to the unique circumstances of the COVID–19 pandemic), applications for deemed new tobacco products on the market at that time were due to FDA by September 9, 2020.[2] The court order also provided a 1-year period during which products with timely filed applications might remain on the market pending FDA review. The number of hours to gather the evidence is FDA's estimate of how long it might take a manufacturer to review, gather, and submit dated information if making a request for Agency determination.

FDA further estimates it would take a manufacturer approximately 5 hours to put together this collection of evidence and to submit the package to FDA for review. FDA estimates that it would take approximately 5,000 hours annually to respond to this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: December 2, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26652 Filed 12–8–21; 8:45 am]

BILLING CODE 4164–01–P

[2] On August 19, 2020, the U.S. District Court for the District of Columbia issued a ruling, in part, to prohibit FDA enforcement of the Tobacco Control Act's premarket authorization requirement for premium cigars until after the agency considers developing a streamlined substantial equivalence process specifically for premium cigars. Accordingly, FDA will not enforce the premarket review requirement against manufacturers of premium cigars that do not submit premarket applications for these products by the September 9, 2020 deadline.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1194]

Fresenius Kabi Deutschland GmbH; Withdrawal of Approval of New Drug Application of Hydroxyethyl Starch

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of a new drug application (NDA) BN 070012/0022 for VOLUVEN (6 Percent Hydroxyethyl Starch 130/0.4 in 0.9 Percent Sodium Chloride Injection), held by Fresenius Kabi Deutschland GmbH. Fresenius Kabi Deutschland GmbH requested in writing that the Agency's approval of the application be withdrawn because the drug is no longer being marketed and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of January 10, 2022.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: Fresenius Kabi Deutschland GmbH, Bad Homburg, Germany (Authorized U.S. Agent: Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047), has requested that FDA withdraw approval of NDA BN 070012 sequence 0022, pursuant to § 314.150(c) (21 CFR 314.150(c)), because the drug is no longer being marketed. By its request, Fresenius Kabi Deutschland GmbH, has also waived its opportunity for a hearing. Withdrawal of approval of an application under § 314.150(c) is without prejudice to refiling.

Application No.	Proprietary name
NDA BN 070012/0022.	VOLUVEN (6% Hydroxyethyl Starch 130/0.4 in 0.9% Sodium Chloride Injection)

Therefore, approval of the application listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of January 10, 2022. Introduction or delivery for introduction into interstate commerce for products without a new drug application violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). The drug product that is listed in the table above that is in inventory on January 10, 2022 may continue to be dispensed until the inventory has been depleted or the drug product has reached its expiration date or otherwise becomes violative, whichever occurs first.

Dated: December 3, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–26648 Filed 12–8–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0825]

Appointment of RADM William G. Kelly, to the Minority Opportunities and Interest Committee of the National Collegiate Athletic Association

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces the appointment of Rear Admiral William G. Kelly, Superintendent of the Coast Guard Academy, to the Minority Opportunities and Interest Committee (MOIC) of the National Collegiate Athletic Association (NCAA). Publication of this notice is directed by Title 10 of the United States Code. Under this appointment, Rear Admiral Kelly will provide oversight and advice to, and coordination with, the NCAA MOIC, but he will not participate in the day-to-day operations of the NCAA or MOIC.

DATES: The appointment was made on November 16, 2021.

FOR FURTHER INFORMATION CONTACT: For information about this notice call or email CDR Aaron J. Casavant, Coast Guard; telephone 860–444–8255, email *Aaron.J.Casavant@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Discussion

The National Collegiate Athletic Association (NCAA) is a nonprofit, non-federal entity that regulates and supports the athletic programs of the Coast Guard Academy. The Coast Guard announces the appointment of Rear Admiral (RADM) William G. Kelly, Superintendent of the Coast Guard Academy, to the Minority Opportunities and Interest Committee (MOIC) of the NCAA effective November 16, 2021. RADM Kelly will serve in his official capacity as the Superintendent of the Coast Guard Academy, without additional compensation, providing oversight and advice to, and coordination with, the NCAA MOIC. RADM Kelly's participation will not extend to participation in the day-to-day operations of the NCAA or MOIC.

The NCAA MOIC champions the causes of ethnic minorities in collegiate athletics by fostering an inclusive environment to create a culture that promotes fair and equitable access to opportunities and resources. RADM Kelly's participation in the MOIC will provide the opportunity to support the important mission of the NCAA as well as visibly demonstrate the Coast Guard's commitment to diversity, equity, and inclusion.

This notice is issued under authority of 10 U.S.C. 1033, and Department of Homeland Security Delegation No. 00170.1 (paragraph II.14), Revision No. 01.2.

Dated: December 3, 2021.

E.C. Jones,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

[FR Doc. 2021–26612 Filed 12–8–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2021–0032]

Privacy Act of 1974; Computer Matching Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of a reestablished matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protections Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, notice is hereby given of the reestablishment of a matching program between the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and the New Jersey Department of Labor and Workforce Development (NJ–LWD). NJ–LWD will match against DHS–USCIS data to verify the immigration status of non-U.S. citizens who apply for federal benefits (Benefit Applicants) under Unemployment Compensation (UC) programs that NJ–LWD administers to determine whether Benefit Applicants possess the requisite immigration status to be eligible for the UC it administers.

DATES: Please submit comments on the proposal by January 10, 2022. The matching program will be effective on January 10, 2022 unless comments have been received from interested members of the public that require modification and republication of the notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: You may submit comments, identified by docket number *DHS–2021–0032* by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS 2021–0032. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this matching program and the contents of this Computer Matching Agreement between DHS–USCIS and NJ–LWD, please view this Computer Matching Agreement at the following website: *https://www.dhs.gov/publication/computer-matching-agreements-and-notices.* For general questions about this matching program, contact Jonathan M. Mills, Acting Chief, USCIS SAVE Program at (202) 306–9874. For general privacy questions, please contact Lynn Parker Dupree, (202) 343–1717, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION: DHS–USCIS provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–108, 81 FR 94424 (December 23, 2016).

Participating Agencies: DHS–USCIS and NJ–LWD.

Authority for Conducting the Matching Program: Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193, 110 Stat. 2168 (1996), requires DHS to establish a system for the verification of immigration status of noncitizen applicants for, or recipients of, certain types of benefits as specified within IRCA, and to make this system

available to state agencies that administer such benefits. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009 (1996) grants federal, state or local government agencies seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency with the authority to request such information from DHS–USCIS for any purpose authorized by law.

Purpose: The purpose of this Agreement is to re-establish the terms and conditions governing NJ–LWD's access to, and use of, the DHS–USCIS Systematic Alien Verification for Entitlements (SAVE) Program, which provides immigration status information from federal immigration records to authorized users, and to comply with the Computer Matching and Privacy Protection Act of 1988 (CMPPA).

NJ–LWD will use the SAVE Program to verify the immigration status of non-U.S. citizens who apply for federal benefits (Benefit Applicants) under the Unemployment Compensation (UC) benefits program that it administers. NJ–LWD will use the information obtained through the SAVE Program to determine whether Benefit Applicants possess the requisite immigration status to be eligible for the UC benefits administered by NJ–LWD.

This Agreement describes the respective responsibilities of DHS–USCIS and NJ–LWD to verify Benefit Applicants' immigration status while safeguarding against unlawful discrimination and preserving the confidentiality of information received from the other party. The requirements of this Agreement will be carried out by authorized employees and/or contractor personnel of DHS–USCIS and NJ–LWD.

Categories of Individuals: The persons about whom DHS–USCIS maintains information, which is contained in its Verification Information System (VIS) database used by the SAVE Program to verify immigration status, that are involved in this matching program include noncitizens (meaning any person as defined in Immigration and Nationality Act section 101(a)(3)), those naturalized, and to the extent those that have applied for Certificates of Citizenship, derived U.S. citizens, on whom DHS–USCIS has a record as an applicant, petitioner, sponsor, or beneficiary. The persons about whom NJ–LWD maintains information that is involved in this matching program include non-citizen Benefit Applicants for, or recipients of, UC administered by NJ–LWD. The persons referred to here are only considered individuals as defined by the Privacy Act, and thus covered under this matching program, to the extent they are U.S. citizens or lawful permanent residents.

Categories of Records: Data elements to be matched between NJ–LWD records and DHS–USCIS federal immigration records include the following: Last Name, First Name, Middle Name, Date of Birth, Immigration Numbers (*e.g.,* Alien Registration/USCIS Number, I–94 Number, SEVIS ID Number, Certificate of Naturalization Number, Certificate of Citizenship Number, or Unexpired Foreign Passport Number), and Other Information from Immigration Documentation (for example, Country of Birth, Date of Entry, Employment Authorization Category). Additional Data elements provided to NJ–LWD from DHS–USCIS records related to the match may include: Citizenship or Immigration Data (for example, immigration class of admission and/or employment authorization), Sponsorship Data (for example, name, address, and social security number of Form I–864/I–864EZ sponsors and Form I–864A household members, when applicable) and Case Verification Number.

System of Records: DHS/USCIS–004 Systematic Alien Verification for Entitlements (SAVE) System of Records Notice, 84 FR 31798 (May 27, 2020).

Lynn Parker Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2021–26692 Filed 12–8–21; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–32977; PPNEGATEB0, PPMVSCS1Z.Y00000]

Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee; Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee) will meet as indicated below.

DATES: The virtual meeting will take place on Thursday, January 6, 2022. The meeting will begin at 9:00 a.m. and conclude at 1:30 p.m., with a public comment period at 11:15 a.m. to 12:00 p.m. (EASTERN). Advance registration is required. Please contact Daphne Yun (see **FOR FURTHER INFORMATION CONTACT**) no later than January 4, 2022, to receive instructions for accessing the meeting. The alternate meeting date is Tuesday, January 18, 2022.

FOR FURTHER INFORMATION CONTACT: This will be a virtual meeting. Anyone interested in attending should contact Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, by telephone (718) 815–3651, or by email *daphne_yun@nps.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established on April 18, 2012, by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906 and is regulated by the Federal Advisory Committee Act. The Committee provides advice to the Secretary, through the Director of the NPS, on matters relating to the Fort Hancock Historic District of Gateway National Recreation Area. All meetings are open to the public.

Purpose of the Meeting: The Gateway National Recreation Area will discuss park updates, leasing updates, and a working group update. The final agenda will be posted on the Committee's website at *https://www.forthancock21.org.* The website includes meeting minutes from all prior meetings.

Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted prior to, during, or after the meeting. Members of the public may submit written comments by mailing them to Daphne Yun (see **FOR FURTHER INFORMATION CONTACT**).

Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to three minutes per speaker. All comments will be made part of the public record and will be electronically distributed to all Committee members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information

will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Appendix 2)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021–26617 Filed 12–8–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CEBE–33025; PPNECEBE00, PPMPSAS1Z.Y00000]

Cedar Creek and Belle Grove National Historical Park Advisory Commission; Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service is hereby giving notice that the Cedar Creek and Belle Grove National Historical Park Advisory Commission (Commission) will meet as indicated below.

DATES: The Commission will meet via teleconference on Thursday, January 13, 2022; Thursday, March 17, 2022; Thursday, June 16, 2022; Thursday, September 15, 2022; and Thursday, December 15, 2022. All scheduled meetings will begin at 9:00 a.m. and end by 11:00 a.m. (EASTERN).

ADDRESSES: Information on joining the teleconference will be available on the Cedar Creek and Belle Grove National Park website at *https://www.nps.gov/cebe/learn/management/park-advisory-commission.htm.*

FOR FURTHER INFORMATION CONTACT: Karen Beck-Herzog, Site Manager, Cedar Creek and Belle Grove National Historical Park, P.O. Box 700, Middletown, Virginia 22645, telephone (540) 868–9176, or visit the park website: *https://www.nps.gov/cebe/index.htm.*

SUPPLEMENTARY INFORMATION: The Commission was designated by Congress to provide advice to the Secretary of the Interior on the preparation and implementation of the park's general management plan and to advise on land protection (16 U.S.C. 410iii–7). This meeting is open to the public. Individuals who are interested in the park, the implantation of the plan, or the business of the Commission are encouraged to attend the meeting. Interested persons may make oral presentations to the Commission. Such requests should be made to the Site Manager at the beginning of the meeting. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Written comments may be sent to Karen Beck-Herzog (see **FOR FURTHER INFORMATION CONTACT**). All comments received will be provided to the Committee. A detailed final agenda will be posted 48 hours in advance of the meeting on the Commission's website at *https://www.nps.gov/cebe/learn/management/park-advisory-commission.htm.* If a meeting date and location are changed, the Superintendent will issue a press release and use local newspapers and/or radio stations to announce the rescheduled meeting.

Purpose of the Meeting: The topics to be discussed include: General management plan next steps, visitor services and interpretation, land protection planning, historic preservation, and natural resource protection.

Commission meetings consist of the following:

1. General Introductions
2. Review and Approval of Commission Meeting Notes
3. Reports and Discussions
4. Old Business
5. New Business
6. Public Comments
7. Closing Remarks

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Appendix 2)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021–26616 Filed 12–8–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1560–1564 (Final)]

Raw Honey From Argentina, Brazil, India, Ukraine, and Vietnam; Scheduling of the Final Phase of Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping duty investigation Nos. 731–TA–1560–1564 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of raw honey from Argentina, Brazil, India, Ukraine, and Vietnam, provided for in heading 0409.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be sold at less-than-fair-value.

DATES: November 23, 2021.

FOR FURTHER INFORMATION CONTACT: Andres Andrade (202–205–2078), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''raw honey. Raw honey is honey as it exists in the beehive or as obtained by extraction, settling and skimming, or coarse straining. Raw honey has not been filtered to a level that results in the removal of most or all of the pollen, *e.g.,* a level that removes pollen to below 25 microns. The subject products include all grades, floral sources and colors of raw honey and also include organic raw

honey. Excluded from the scope is any honey that is packaged for retail sale (*e.g.,* in bottles or other retail containers of five (5) lbs. or less).''

Background.—The final phase of these investigations is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of affirmative preliminary determinations by Commerce that imports of raw honey from Argentina, Brazil, India, Ukraine, and Vietnam are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on April 21, 2021, by the American Honey Producers Association (''AHPA''), Bruce, South Dakota and the Sioux Honey Association (''SHA''), Sioux City, Iowa.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 29, 2022, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.— The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, April 12, 2022. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Wednesday, April 6, 2022. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Friday, April 8, 2022. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is April 5, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 19, 2022. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before April 19, 2022. On May 4, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 6, 2022, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 6, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26688 Filed 12–8–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1232]

Certain Chocolate Milk Powder and Packaging Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 1, 2021, the presiding administrative law judge (''ALJ'') issued an Initial Determination Granting Complainant Meenaxi Inc.'s Motion for Summary Determination of Violation by the Defaulting Respondents, and a Recommended Determination on Remedy and Bonding (''ID/RD''). The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. All of the respondents in this investigation have previously been found in default.[1] Notice at 2 (Mar. 2, 2021). The ALJ recommended the issuance of a general exclusion order (''GEO'') directed to certain chocolate milk powder and packaging thereof that infringe U.S. Trademark Registration No. 4,206,026, which protects the word mark BOURNVITA. The ALJ further recommended that bond during the Presidential review period be set at one hundred percent (100%) of the entered value of subject products. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's ID/RD. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, 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 recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended 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 recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on December 31, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1232'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written

[1] Bharat Bazar Inc. of Union City, California; Madras Group Inc. d/b/a Madras Groceries of Sunnyvale, California; Organic Food d/b/a Namaste Plaza Indian Super Market of Fremont, California; India Cash & Carry of Sunnyvale California; New India Bazar Inc. d/b/a New India Bazar of San Jose, California; Aapka Big Bazar of Jersey City, New Jersey; Siya Cash & Carry Inc. d/b/a Siya Cash & Carry of Newark, New Jersey; JFK Indian Grocery LLC d/b/a D-Mart Super Market of Jersey City, New Jersey; Trinethra Indian Super Markets of Newark, California; Apna Bazar Cash & Carry Inc. d/b/a Apna Bazar Cash & Carry of Edison, New Jersey; Subzi Mandi Cash & Carry Inc. d/b/a Mandi Cash & Carry of Piscataway, New Jersey; Patidar Cash & Carry Inc. d/b/a Patidar Cash & Carry of South Plainfield, New Jersey; Keemat Grocers of Sugarland, Texas; KGF World Food Warehouse Inc. d/b/a World Food Mart of Houston, Texas; Telfair Spices of Sugarland Texas; Indian Groceries and Spices Inc. d/b/a iShopIndia.com of Milwaukee, Wisconsin; Rani Foods LP d/b/a Rani's World Foods of Houston, Texas; Tathastu Trading LLC of South Plainfield, New Jersey; and Choice Trading LLC of Guttenberg, New Jersey (collectively, the ''Defaulting Respondents'').

submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 3, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26626 Filed 12–8–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–665 (Final)]

Certain Mobile Access Equipment and Subassemblies Thereof From China; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is threatened with material injury by reason of imports of certain mobile access equipment and subassemblies thereof (''mobile access equipment'') from China, provided for in subheadings 8427.10.80, 8427.20.80, 8427.90.00, and 8431.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be subsidized by the government of China.[2]

Background

The Commission instituted this investigation effective February 26, 2021, following receipt of a petition filed with the Commission and Commerce by the Coalition of American Manufacturers of Mobile Access Equipment (''CAMMAE'' or ''the Coalition'').[3] The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of mobile access equipment from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 12, 2021 (86 FR 44402). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on October 12, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to § 705(b) of the Act (19 U.S.C. 1671d(b)). It completed and filed its determination in this investigation on December 3, 2021. The views of the Commission are contained in USITC Publication 5242 (December 2021), entitled *Certain Mobile Access Equipment and Subassemblies Thereof from China: Investigation No. 701–TA–665 (Final).*

By order of the Commission.

Issued: December 3, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–26623 Filed 12–8–21; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 86 FR 57809 (October 19, 2021).

[3] The Coalition is composed of JLG Industries, Inc. (''JLG''), Hagerstown, Maryland and Terex Corporation (''Terex''), Redmond, Washington.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–938]

Importer of Controlled Substances Application: Catalent Pharma Solutions, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Catalent Pharma Solutions, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 10, 2022. Such persons may also file a written request for a hearing on the application on or before January 10, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on September 10, 2021, Catalent Pharma Solutions LLC, 3031 Red Lion Road, Philadelphia, Pennsylvania 19114, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to import the above controlled substances as finished dosage unit products for clinical trials, research, and analytical activities. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–26678 Filed 12–8–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA 937]

Importer of Controlled Substances Application: Fresenius Kabi USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Fresenius Kabi USA, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and

applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 10, 2022. Such persons may also file a written request for a hearing on the application on or before January 10, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on September 8, 2021, Fresenius Kabi USA, LLC, 3159 Staley Road, Grand Island, New York 14072–2028, applied to be registered as an importer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Remifentanil	9739	II

The company plans to import the listed controlled substances for bulk manufacture. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–26677 Filed 12–8–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–928]

Bulk Manufacturer of Controlled Substances Application: Noramco Coventry LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Noramco Coventry LLC, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before February 7, 2022. Such persons may also file a written request for a hearing on the application on or before February 7, 2022.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on September 29, 2021, Noramco Coventry LLC, 498 Washington Street, Coventry, Rhode Island 02816, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Dihydromorphine	9145	I
Methylphenidate	1724	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Levorphanol	9220	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Tapentadol	9780	II

The company plans to bulk manufacture the listed controlled substances for use as intermediates and converted to other controlled substances or for sale to its customers. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–26676 Filed 12–8–21; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On November 5, 2021, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on December 6, 2021, to:

1. Henry Wulff, Atlas Ocean Voyages—Permit No. 2022–021
2. Deirdre Dirkman, Vantage Deluxe World Travel—Permit No. 2022–022
3. Tom Russell, Swan Hellenic Antarctic—Permit No. 2022–023
4. Michael Hjorth, Albatros Expeditions—Permit No. 2022–024

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–26671 Filed 12–8–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On July 23, 2021, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on December 1, 2021, to:

1. Dr. Luis Huckstadt—Permit No. 2022–001.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–26672 Filed 12–8–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0055]

Information Collection: NRC Online Form, Request for Alternatives

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Online Form, ''Request for Alternatives.''

DATES: Submit comments by January 10, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0055 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–2021–0055.
- *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 supporting statement is available in ADAMS under Accession No. ML21225A420.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Online Form, ''Request for Alternatives Under 10 CFR 50.55a(z)(1) and 10 CFR 50.55a(z)(2).'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 2, 2021 (86 FR 35368).

1. *The title of the information collection:* NRC Online Form, ''Request for Alternative Under 10 CFR 50.55a(z)(1) and 10 CFR 50.55a(z)(2).''
2. *OMB approval number:* 3150–0244.
3. *Type of submission:* Revision.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* On occasion.
6. *Who will be required or asked to respond:* All holders of, and certain applicants for, nuclear power plant construction permits and operating licenses under the provisions of part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities'' who use alternatives to the requirements of 10 CFR 50.55a paragraphs (b) through (h) when authorized by the NRC have the option of using the online form.
7. *The estimated number of annual responses:* 297.
8. *The estimated number of annual respondents:* 104.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1,782.
10. *Abstract:* Section 50.55a of 10 CFR incorporates by reference Division 1 rules of Section III, ''Rules for Construction of Nuclear Power Plant Components,'' and Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' of the American Society of Mechanical Engineers (ASME) Boiler and Pressure

Vessel Code (B&PV Code); and the rules of the ASME ''Code for Operation and Maintenance of Nuclear Power Plants'' (OM Code). These rules of the ASME B&PV and OM Codes set forth the requirements to which nuclear power plant components are designed, constructed, tested, repaired, and inspected. Section 50.55a(z) of 10 CFR allows applicants to use alternatives to the requirements of 10 CFR 50.55a paragraphs (b) through (h) when authorized by the NRC. To facilitate licensees' requests for alternatives to the requirements in the above regulations, the NRC is providing an optional online form to submit the required information for a specific alternative request under 10 CFR 50.55a(z).

Dated: December 6, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–26646 Filed 12–8–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–28 and CP2022–31]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 13, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–28 and CP2022–31; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 212 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 3, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 13, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–26661 Filed 12–8–21; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93714; File No. SR–NYSE–2021–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Requirements of Section 102.06 of the NYSE Listed Company Manual To Allow an Acquisition Company To Contribute a Portion of Its Trust Account to a New Acquisition Company and Spin-Off the New Acquisition Company to Its Shareholders

December 3, 2021.

I. Introduction

On August 23, 2021, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the requirements of Section 102.06 of the NYSE Listed Company Manual (''Manual'') to allow an acquisition company to contribute a portion of the amount held in its trust account to a trust account of a new acquisition company and spin off the new acquisition company to its shareholders in certain situations. The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[3] On September 30, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5]

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92839 (September 1, 2021), 86 FR 50408 (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2021-42/srnyse202142.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93222, 86 FR 55671 (October 6, 2021). The Commission designated December 7, 2021 as the date by which the Commission shall approve or disapprove, or

This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

In 2008, the Exchange adopted a rule to allow companies that have no prior operating history and that have indicated their business plan is to consummate a business combination with one or more operating businesses or assets (''Business Combination'')[7] to list on the Exchange if they meet all applicable initial listing requirements, as well as additional conditions designed to provide investor protections to address specific concerns about the structure of such companies (''Acquisition Companies'' or ''ACs'').[8] These additional conditions generally require, among other things, that at least 90% of the proceeds from the initial public offering (''IPO'') and any concurrent sale of the AC's equity securities be held in a trust account controlled by an independent custodian and that the AC complete within three years (or such shorter period specified by the AC's constitutive documents or by contract) a Business Combination having a fair market value of at least 80% of the net assets held in the trust account at the time of the agreement to enter into the initial combination (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust).[9] Section 102.06 of the Manual further requires that each Business Combination be approved by a majority of the AC's independent directors.[10] If the AC holds a shareholder vote on a Business Combination, the Business Combination must be approved by a majority of the votes cast at the meeting and public shareholders voting against the Business Combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable and amounts distributed to management for working capital purposes) if the Business Combination is approved and consummated.[11] If a shareholder vote on a Business Combination is not held, the AC must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e–4 and Regulation 14E under the Act, which regulate issuer tender offers.[12]

The Exchange now proposes to modify Section 102.06 of the Manual to allow an AC listed under that rule to contribute a portion of the amount held in its trust account to the trust account of a new entity in a spin-off or similar corporate transaction (''SpinCo AC''). According to the Exchange, when an AC conducts its IPO, it raises the amount of capital that it estimates will be necessary to finance a subsequent Business Combination with its ultimate target; however, the Exchange believes that because an AC cannot identify or select a specific target at the time of its IPO, often the amount raised is not optimal for the needs of a specific target.[13] The Exchange states that it is proposing to modify Section 102.06 of the Manual to permit what it believes is a more efficient structure whereby an AC can raise in its IPO the maximum amount of capital it anticipates it may need for a Business Combination transaction and then ''rightsize'' itself by contributing any amounts not needed to a SpinCo AC, which would be subject to the provisions of Section 102.06, in the same manner as the original AC, and spun off to the original AC's shareholders.[14]

Specifically, proposed Section 102.06 of the Manual would provide that an AC will be permitted to contribute (the ''Contribution'') in a spin-off or similar corporate transaction a portion of the amount held in the AC's trust account to a trust account of another entity as provided below:

(i) In connection with the Contribution, each AC public shareholder has the right, through one or more corporate transactions, to redeem a portion of its shares of common stock or units, as applicable, for its pro rata portion of the amount of the Contribution in lieu of being entitled to receive shares or units in the SpinCo AC;

(ii) the requirement of Section 102.06 of the Manual that the AC provide each public shareholder voting against a Business Combination with the right to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable, and amounts disbursed to management for working capital purposes), provided that the Business Combination is approved and consummated, will be considered satisfied by pro rata distribution to such shareholders of the amounts in the trust account after having been reduced by the Contribution;

(iii) the public shareholders of the AC receive shares or units of the SpinCo AC on a pro rata basis, except to the extent they have elected to redeem a portion of their shares of the AC in lieu of being entitled to receive shares or units in the SpinCo AC;

(iii)[15] the Contribution will remain in a trust account for the benefit of the shareholders of the SpinCo AC in the manner required for ACs listed under Section 102.06 of the Manual;

(iv) the SpinCo AC meets all applicable initial listing requirements for an AC listing in connection with an initial public offering under Section 102.06 of the Manual; it being understood that, following such spin-off or similar corporate transaction:

(A) The 80% described in the first paragraph of Section 102.06[16] shall, in the case of the AC, be calculated based on the aggregate amount remaining in the trust account of the AC at the time of the agreement to enter into the Business Combination as reduced by the Contribution, and, in the case of the SpinCo AC, be calculated based on the aggregate amount in its trust account at the time of its agreement to enter into a Business Combination, and

(B) the right to convert and opportunity to redeem shares of common stock on a pro rata basis required for ACs listed under Section 102.06 of the Manual shall, in the case of the AC, be deemed to apply to the aggregate amount remaining in the trust account of the AC after the Contribution to the SpinCo AC, and, in the case of the

institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Section 102.06 of the Manual provides that a Business Combination may be in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets.

[8] *See* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008) (SR–NYSE–2008–17) (''2008 Order''). *See also* Section 102.06 of the Manual. Acquisition Companies are also known as ''Special Purpose Acquisition Companies'' or ''SPACs.''

[9] *See* Section 102.06 of the Manual.

[10] *See* Section 102.06(d) of the Manual.

[11] *See* Section 102.06(a) and (b) of the Manual.

[12] *See* Section 102.06(c) of the Manual.

[13] *See* Notice, *supra* note 3, at 50409. The Exchange further states that ''[t]his has resulted in the inefficient, current practice of AC sponsors creating multiple ACs of different sizes at the same time, with the intention to use the AC that is closest in size to the amount a particular target needs.'' *Id.*

[14] *See id.* The three-year period to complete a Business Combination under Section 102.06 of the Manual would, however, be calculated for each SpinCo AC based on the date of the original AC's effective registration statement.

[15] The Exchange's proposed rule mistakenly includes two paragraphs numbered Section 102.06(iii).

[16] See *supra* note 9 and accompanying text, for a description of the requirements of Section 102.06 of the Manual.

SpinCo AC, be deemed to apply to the aggregate amount in its trust account;

(v) in the case of the SpinCo AC, and any additional entities spun off from the SpinCo AC, each of which will also be considered a SpinCo AC, the three-year period (or such shorter period specified by the AC's constitutive documents or by contract) within which a listed AC must consummate its Business Combination under Section 102.06 of the Manual will be calculated based on the date of effectiveness of the AC's IPO registration statement; and

(vi) in the aggregate, through one or more opportunities by the AC and one or more SpinCo ACs, public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the trust account established by the AC as described in the first paragraph of Section 102.06 of the Manual (excluding any deferred underwriters fees and taxes payable on the income earned on the trust account).

The Exchange states that, under the proposal, it expects that the new structure will be implemented in the following manner. If a listed AC (the ''Original AC'') determines that it will not need all the cash in its trust account for its initial Business Combination, the Original AC will designate the excess cash for a new trust account of a SpinCo AC that will be spun off to Original AC's shareholders.[17] The Exchange states that the amount designated for the SpinCo trust account must continue to be held for the benefit of the shareholders of the Original AC until the completion of the spin-off transaction and, following the spin-off of the SpinCo AC to the Original AC's shareholders, the SpinCo trust account would be subject to the same requirements as the trust account of the Original AC.[18]

According to the Exchange, the SpinCo AC would file a registration statement under the Securities Act of 1933 for purposes of effecting the spin-off of the SpinCo AC and, prior to the effectiveness of the registration statement, the Original AC would provide its public shareholders through one or more corporate transactions with the opportunity to redeem a pro rata amount of their holdings equal to the amount of the SpinCo trust account divided by the per share amount in the Original AC's trust account.[19] The Exchange further states that, after completing the tender offer for the redemption and the effectiveness of the SpinCo AC's registration statement, the Original AC would contribute the SpinCo trust account to a trust account held by the SpinCo AC in exchange for shares or units of the SpinCo AC, which the Original AC would then distribute to its public shareholders on a pro rata basis through one or more corporate transactions pursuant to the SpinCo AC's effective registration statement.[20]

According to the Exchange, the Original AC would then continue to operate as an AC until it completes its Business Combination and would offer redemption rights to its public shareholders in connection with that Business Combination in the same manner as a traditional AC, while the SpinCo AC would operate in the same manner as a traditional AC, except that it could effect a subsequent spin-off prior to its Business Combination like the Original AC.[21] The Exchange states that if SpinCo AC does not elect to effect a spin-off, it would either (i) proceed to complete an initial Business Combination and offer redemption rights in connection therewith like a traditional AC, or (ii) liquidate.[22]

Finally, the Exchange proposes to amend the subsection of Section 802.01B of the Manual setting forth the continued listing criteria applicable to ACs to specify that those criteria would also be applicable in their entirety to SpinCo ACs. In addition, the Exchange proposes to add a new subsection to Section 102.06 of the Manual stating that the applicable continued listing criteria for both ACs and SpinCo ACs would be set forth in Section 802.01B of the Manual.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2021–42 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[23] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act,[24] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[25]

As described above, the proposal would allow an AC listed under Section 102.06 of the Manual to contribute a portion of the amount held in its trust account to the trust account of a SpinCo AC. The Exchange states that the proposal would permit a more efficient structure because an AC often raises an amount of capital through its IPO that is not optimal for the needs of a specific acquisition target.[26] According to the Exchange, this has resulted in AC sponsors creating multiple ACs of different sizes at the same time, with the intention to use the AC that is closest in size to the amount a particular acquisition target needs.[27] The Exchange believes this practice creates the potential for conflicts of interest, fails to optimize the amount of capital that would benefit the AC's public shareholders and a Business Combination target, creates inefficiencies, and can lead to confusion.[28] Accordingly, the Exchange believes the proposal would provide shareholders the opportunity to invest with a sponsor without spreading that investment across the sponsor's multiple ACs.[29]

The Commission has concerns, however, about whether the proposal is sufficiently designed to protect investors and the public interest, as required by Section 6(b)(5) of the Act.

[17] *See* Notice, *supra* note 3, at 50409.

[18] *See id.*

[19] *See id.* According to the Exchange, the redemption could occur, for example, through a partial cash tender offer for shares of the Original AC pursuant to Rule 13e–4 and Regulation 14E under the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original AC for the purpose of facilitating the redemption. *See id.* at 50409 n.5.

[20] *See id.* at 50409.

[21] *See id.*

[22] *See id.*

[23] 15 U.S.C. 78s(b)(2)(B).

[24] *Id.*

[25] 15 U.S.C. 78f(b)(5).

[26] *See* Notice, *supra* note 3, at 50409.

[27] *See id.*

[28] *See id.*

[29] *See id.* at 50410.

First, the Commission is concerned that the proposed amendments to Section 102.06 of the Manual would circumvent the current requirements of Section 102.06 that the Commission previously found were designed to protect investors.[30] Specifically, Section 102.06 of the Manual requires an AC to complete one or more Business Combinations having a fair market value equal to at least 80% of the net assets held in trust.[31] This 80% requirement sets a minimum size of a Business Combination that investors will be aware of from their initial investment. In addition, the 80% requirement ensures that the founders of the AC will not seek a very small AC target solely to ensure they successfully complete a Business Combination in order to break escrow and thereby earn their payment (promote) for finding a target. The proposal could potentially allow an AC to engage in multiple Business Combinations that are very small in size as compared to the original amount in the trust account. The proposal also does not include any limitations with respect to the amount an AC may contribute to a SpinCo AC and thereby reduce its escrow account. Moreover, it appears the proposed structure could potentially incentivize AC founders to complete smaller Business Combinations in cases where they cannot identify a target company of sufficient size to meet the 80% requirement with respect to the Original AC, thereby leaving investors with a choice of whether to accept an investment in a smaller-sized company than originally contemplated or a partial redemption of their original investment from the reduced deposit account. The Commission is concerned that allowing ACs to engage in such transactions effectively eliminates the original 80% requirement, may subvert investor expectations regarding an AC's future Business Combination prospects, and may benefit the founders of ACs at the expense of retail investors.[32] In this regard, the Commission is concerned that the Exchange has not provided sufficient justification regarding how its proposal is consistent with the protection of investors, including the investor protection measures that were originally contemplated by Section 102.06 of the Manual and which the Commission found to be consistent with the Act.[33]

Furthermore, the Commission believes the proposal could introduce additional complexity to AC securities, particularly for retail investors. While the market in AC securities is already complex, the Exchange's proposal would allow for the listing of ACs that may spin-off into smaller and smaller ACs, each presenting additional risks and considerations to investors that may not be fully realized at the time of the Original AC's IPO or at the time of each spin-off transaction when investors have the opportunity to receive shares in the SpinCo AC or redeem their pro-rata portion of the SpinCo AC Contribution.[34] Further, although the Exchange states the proposal is expected to allow an AC that determines that it will have excess cash following its initial Business Combination to spin-off those funds to a new AC,[35] the proposal is not limited to this particular situation and would allow an AC to break escrow to create new SpinCo ACs at any time after its IPO, regardless of whether any potential Business Combination has been identified.[36] Moreover, under current AC rules, investors have to make one determination on whether to redeem their shares or retain ownership in the combined operating business after a Business Combination that has a fair market value equal to at least 80% of the net assets of the trust account. In contrast, under the proposal, investors would have to make multiple decisions on whether to hold or redeem their securities in potentially multiple SpinCo ACs, and those investors that choose to redeem may not be made whole as to their original investment until a subsequent Business Combination of the Original AC and/or the SpinCo ACs occurs. Additionally, the proposal raises concerns about whether investors are adequately protected when only the sponsors, not shareholders, are participating in the decision to reduce the deposit account and contribute those funds to the SpinCo AC.[37] For these reasons, the Commission is concerned that investors may not have adequate information at the time they initially invest in the Original AC and at the time they are required to make decisions regarding whether to invest in the SpinCo ACs or to redeem their investment, which can occur multiple times over the term of the Original AC, raising investor protection concerns under Section 6(b)(5) of the Act.

The Commission is also concerned that certain aspects of the proposed rule change are vague and unclear and may raise additional investor protection concerns. For example, proposed Section 102.06(i) would provide shareholders the right to redeem, ''through one or more corporate transactions,'' their pro rata portion of the AC's contribution to a SpinCo AC's trust account. In addition, proposed Section 102.06(vi) provides that public shareholders will have the ability to convert or redeem shares, or receive amounts upon liquidation, for the full amount of the trust account ''through one or more opportunities.'' The proposal, however, does not set forth any specific requirements applicable to the redemption or conversion opportunities with respect to the contribution to a SpinCo AC or specify what would qualify as an acceptable corporate transaction for purposes of a redemption.[38] Moreover, the proposed

[30] *See* 2008 Order, *supra* note 8.

[31] The trust account must contain at least 90% of the proceeds from the AC's IPO and any concurrent sale by the AC of equity securities. *See* Section 102.06 of the Manual.

[32] Moreover, the proposal does not appear to be limited to future ACs and could potentially allow existing ACs to engage in spin-offs. The Commission believes that permitting existing ACs to engage in such transactions could raise investor protection issues given that investors who initially invested in the ACs would not have been aware that the AC would not have to comply with the 80% requirement and could spin off into multiple SpinCo ACs.

[33] *See* 2008 Order, *supra* note 8. In addition, the proposal appears to require redeeming shareholders to effectively pay deferred underwriting fees by deducting those fees from the aggregate redemption amount available to shareholders. *See* proposed Section 102.06(vi) of the Manual. This is not required for the Original AC as set forth under current Section 102.06(b) and (c) of the Manual and would result in the redeeming shareholders potentially receiving less than 90% of the gross proceeds from the trust account. Under the current AC listing rules, only taxes payable and amounts disbursed to management for working capital purposes can be excluded from the aggregate amount in the trust account.

[34] For example, under the proposal it would be difficult for an investor to know at the time of its investment in the Original AC (or at the time of each contribution) whether there will be future contributions to SpinCos, and, if so, how much the original escrow will be reduced and how much will be left for the Original AC's Business Combination. The Commission believes such information would be important to investors in making informed investment decisions in the Original AC.

[35] *See* Notice, *supra* note 3, at 50409.

[36] The proposal also does not include any timing limitations with respect to when an AC may engage in a contribution and spin-off. As such, it appears that a contribution and spin-off could occur very close to the end of the three-year period within which the Original AC and any SpinCo AC has to complete its Business Combination. This raises investor protection issues since shareholders may not have enough time to review disclosures before a vote or redemption decision is required.

[37] In these situations, the SpinCo AC may be structured completely differently than was disclosed at the time of the investment in the Original AC. For example, nothing in the proposal prevents the SpinCo AC from having a different target industry or business than the Original AC, different compensation arrangements than the Original AC, or different terms than disclosed in the Original AC registration statement.

[38] The Exchange states that a redemption could occur, for example, through a partial cash tender offer for shares of the Original AC pursuant to Rule

Continued

rule states that an AC will be permitted to contribute a portion of the amount held in the trust account to a trust account of ''another entity'' in a spin-off ''or similar corporate transaction.'' However, the proposal does not specify whether there are any limitations on the types of entities that may receive the contribution, including whether such entities could include an already existing AC, or what would constitute a ''similar transaction.'' The Commission is concerned that the lack of clarity and vagueness in the proposed rule text may cause confusion amongst market participants regarding the scope of the proposal and what is required under the proposed rules.

In addition, the Exchange has proposed that the conditions described in proposed Section 102.06 with respect to SpinCo ACs shall similarly apply to successive spin-offs or similar corporate transactions. The Exchange provides no specificity or detail regarding what factors the Exchange would consider when determining whether a transaction is a ''similar corporate transaction'' to a spinoff covered by the proposed rule. As drafted, the rule text would appear to give the Exchange broad discretion in determining what ''similar'' corporate transactions are covered by the proposed rule and such broad discretion could be used in a different manner with respect to different AC issuers. It is also difficult for the Commission to assess whether the proposal is consistent with Section 6(b)(5) of the Act if the Exchange could simply determine to apply the rule to some successive corporate transactions and not others on a case by case basis by invoking its discretion through the proposed language. The Commission believes this lack of transparency and objectivity in the proposed rule raises investor protection and unfair discrimination concerns under the Act because market participants may be confused about the scope of the proposal and the Exchange may elect to apply its rules in an inconsistent and discriminatory manner.

Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirements, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest, and not be designed to permit unfair discrimination.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [39] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[40] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[41]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [42] to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [43] of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[44] any request for an opportunity to make an oral presentation.[45]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 30, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 13, 2022. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[46] in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2021–42. 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

13e–4 and Regulation 14E under the Act, and the redemption may be of a separate class of shares distributed to unitholders of the Original AC for the purpose of facilitating the redemption. *See* Notice, *supra* note 3, at 50409 n.5. On the other hand, Section 102.06 of the Manual currently includes very specific requirements relating to redemption rights of public shareholders with respect to a Business Combination. *See* Section 102.06(b)–(c) of the Manual.

[39] 17 CFR 201.700(b)(3).

[40] *See id.*

[41] *See id.*

[42] 15 U.S.C. 78s(b)(2)(B).

[43] 15 U.S.C. 78f(b)(5).

[44] 17 CFR 240.19b–4.

[45] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[46] *See supra* note 3.

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2021–42 and should be submitted by December 30, 2021. Rebuttal comments should be submitted by January 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26625 Filed 12–8–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–586, OMB Control No. 3235–0647]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 204

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in Rule 204 (17 CFR 242.204) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 204(a) provides that a participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in the equity security, the participant shall, by no later than the beginning of regular trading hours on the applicable close-out date, immediately close out its fail to deliver positions by borrowing or purchasing securities of like kind and quantity. For a short sale transaction, the participant must close out a fail to deliver by no later than the beginning of regular trading hours on the settlement day following the settlement date. If a participant has a fail to deliver that the participant can demonstrate on its books and records resulted from a long sale, or that is attributable to bona-fide market making activities, the participant must close out the fail to deliver by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date. Rule 204 is intended to help further the Commission's goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, Rule 204 is intended to help further the Commission's goal of addressing potentially abusive ''naked'' short selling in all equity securities.

The information collected under Rule 204 will continue to be retained and/or provided to other entities pursuant to the specific rule provisions and will be available to the Commission and self-regulatory organization (''SRO'') examiners upon request. The information collected will continue to aid the Commission and SROs in monitoring compliance with these requirements. In addition, the information collected will aid those subject to Rule 204 in complying with its requirements. These collections of information are mandatory.

Several provisions under Rule 204 will impose a ''collection of information'' within the meaning of the Paperwork Reduction Act.

I. Allocation Notification Requirement: As of December 31, 2020, there were 3,551 registered broker-dealers.[1] Each of these broker-dealers could clear trades through a participant of a registered clearing agency and, therefore, become subject to the notification requirements of Rule 204(d). If a participant allocates a fail to deliver position to a broker or dealer pursuant to Rule 204(d), the broker or dealer that has been allocated the fail to deliver position in an equity security must determine whether such fail to deliver position was closed out in accordance with Rule 204(a). If such broker or dealer does not comply with the provisions of Rule 204(a), such broker or dealer must immediately notify the participant that it has become subject to the requirements of Rule 204(b). The Commission estimates that a broker or dealer could have to make such determination and notification with respect to approximately 2.1 equity securities per day.[2] The Commission estimates a total of 1,886,646 potential notifications in accordance with Rule 204(d) across all registered broker-dealers that could be allocated responsibility to close out a fail to deliver position per year (3,551 registered broker-dealers notifying participants once per day [3] on 2.1 equity securities, multiplied by 253 trading days in 2020). The total estimated annual burden hours per year will be approximately 301,864 burden hours (1,886,646 multiplied by 0.16 hours/notification).[4]

II. Demonstration Requirement for Fails to Deliver on Long Sales: As of December 31, 2020, there were 127 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security at a registered clearing agency and determined that such fail to deliver position resulted from a long sale, the Commission estimates that a participant of a registered clearing agency will have to make such a determination with respect to approximately 29 securities per day.[5] The Commission estimates a total of 931,799 potential demonstrations in accordance with Rule 204(a)(1) across all broker-dealer participants per year (127 participants checking for compliance once per day on 29 securities, multiplied by 253 trading days in 2020). The total approximate estimated annual burden hours per year will be approximately 149,088 burden

[47] 17 CFR 200.30–3(a)(57).

[1] The Commission's Division of Economic Risk and Analysis (''DERA'') estimates that there were approximately 3,551 registered broker-dealers as of December 31, 2020.

[2] DERA estimates that there were approximately 7,450 average daily fail to deliver positions during 2020. Across 3,551 registered broker-dealers, the number of securities per registered broker-dealer per trading day is approximately 2.1 (7,450 ÷ 3,551) equity securities.

[3] Because failure to comply with the close-out requirements of Rule 204(a) is a violation of the rule, the Commission believes that a broker or dealer would make the notification to a participant that it is subject to the borrowing requirements of Rule 204(b) at most once per day.

[4] *See* Amendments to Regulation SHO, Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38265 (July 31, 2009) (''Rule 204 Adopting Release'') (July 27, 2009) (making permanent the amendments to Regulation SHO contained in Interim Final Temporary Rule 204T and incorporating by reference the time estimates from the Rule 204T Adopting Release for compliance with the notification, demonstration, and certification requirements of Rule 204).

[5] DERA estimates that during 2020 approximately 49.2% of trade volume was long. DERA estimates that there were approximately 7,450 average daily fail to deliver positions during 2020. Across 127 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 59 (7,450 ÷ 127) equity securities. 49.2% of 59 equity securities per trading day equals approximately 29 securities per day.

hours (931,799 multiplied by 0.16 hours/demonstration).[6]

III. Pre-Borrow Notification Requirement: As of December 31, 2020, there were 127 participants of NSCC that were registered as broker-dealers. If a participant of a registered clearing agency has a fail to deliver position in an equity security, the participant must determine whether the fail to deliver position was closed out in accordance with Rule 204(a). The Commission estimates that a participant of a registered clearing agency will have to make such determination with respect to approximately 59 equity securities per day.[7] The Commission estimates a total of 1,895,729 potential notifications in accordance with Rule 204(c) across all participants per year (127 broker-dealer participants notifying broker-dealers once per day on 59 securities, multiplied by 253 trading days in 2020). The total estimated annual burden hours per year will be approximately 303,317 burden hours (1,895,729 multiplied by 0.16 hours/notification).[8]

IV. Certification Requirement: As of December 31, 2020, there were 3,551 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. If the broker-dealer determines that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or has purchased or borrowed securities in accordance with the pre-fail credit provision of Rule 204(e), the Commission estimates that a broker-dealer could have to make such determination with respect to approximately 2.1 securities per day.[9] The Commission estimates that each such registered broker-dealer could have to certify to a participant that the broker-dealer has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that the broker-dealer is in compliance with the requirements set forth in the pre-fail credit provision of Rule 204(e), 1,886,646 times per year (3,551 registered broker-dealers certifying once per day on 2.1 securities, multiplied by 253 trading days in 2020). The total approximate estimated annual burden hours per year will be approximately 301,864 burden hours (1,886,646 multiplied by 0.16 hours/certification).[10]

V. Pre-Fail Credit Demonstration Requirement: As of December 31, 2020, there were 3,551 registered broker-dealers. If a broker-dealer purchased or borrowed securities in accordance with the conditions specified in Rule 204(e) and determined that it had a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit, the Commission estimates that a broker-dealer could have to make such determination with respect to approximately 2.1 securities per day.[11] The Commission estimates that the total number of times per year that such registered broker-dealers could have to demonstrate on their respective books and records that the broker-dealer has a net long position or net flat position on the settlement day for which the broker-dealer is claiming pre-fail credit is 1,886,646 times per year (3,551 registered broker-dealers checking for compliance once per day on 2.1 equity securities, multiplied by 253 trading days in 2020). The total approximate estimated annual burden hours per year will be 301,864 burden hours (1,886,646 multiplied by 0.16 hours/demonstration).[12]

The total aggregate annual burden for the collection of information undertaken pursuant to all five provisions is thus 1,357,997 hours per year (301,864 + 149,088 + 303,317 + 301,864 + 301,864).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 6, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26675 Filed 12–8–21; 8:45 am]

BILLING CODE 8011–01–P

[6] *See supra* note 4.

[7] *See supra* note 5.

[8] *See supra* note 4.

[9] *See supra* note 2.

[10] *See supra* note 4.

[11] *See supra* note 2.

[12] *See supra* note 4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34 93713 File No. SR–NASDAQ–2021–091]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain Annual Listing Fees To Be Implemented on January 1, 2022

December 3, 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 November 22, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') 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

The Exchange proposes to modify certain listing fees. While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the Exchange's all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets.

Currently, for companies listed on the Capital Market, other than, in part, ADRs, Closed-end Funds and Limited Partnerships, the all-inclusive annual fee ranges from $44,000 to $79,000; for ADRs listed on the Capital Market the all-inclusive annual fee ranges from $44,000 to $53,000; and for Limited Partnerships listed on the Capital Market the all-inclusive annual fee ranges from $32,000 to $39,500. On the Global and Global Select Markets, the all-inclusive annual fee for companies other than, in part, ADRs, Closed-end Funds and Limited Partnerships ranges from $47,000 to $163,000; for ADRs the all-inclusive annual fee ranges from $47,000 to $84,000; and for Limited Partnerships the all-inclusive annual fee ranges from $39,500 to $81,500. The all-inclusive annual fee for Closed-end Funds listed on any market tier ranges from $32,000 to $105,000. In each case, a company's all-inclusive annual fee is based on its total shares outstanding.[3]

Nasdaq proposes to amend the all-inclusive annual fee for all domestic and foreign companies listing equity securities on the Nasdaq Global Select, Global and Capital Markets to the following amounts,[4] effective January 1, 2022:

GLOBAL/GLOBAL SELECT MARKETS

	Total shares outstanding	Annual fee before the proposed change	Annual fee effective January 1, 2022
Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships.	Up to 10 million shares	$47,000	$48,000
	10+ to 50 million shares	58,000	59,500
	50+ to 75 million shares	79,000	81,000
	75+ to 100 million shares	105,000	107,500
	100+ to 125 million shares	131,000	134,500
	125+ to 150 million shares	142,000	145,500
	Over 150 million shares	163,000	167,000
ADRs	Up to 10 million ADRs and other listed equity securities	47,000	48,000
	10+ to 50 million ADRs and other listed equity securities	53,000	54,500
	50+ to 75 million ADRs and other listed equity securities	63,000	64,500
	Over 75 million ADRs and other listed equity securities	84,000	86,000
Closed-end Funds	Up to 50 million shares	32,000	33,000
	50+ to 100 million shares	53,000	54,500
	100+ to 250 million shares	79,000	81,000
	Over 250 million shares	105,000	107,500
Limited Partnerships	Up to 75 million shares	39,500	40,500
	75+ to 100 million shares	53,000	54,500
	100+ to 125 million shares	65,500	67,000
	125+ to 150 million shares	70,500	72,500
	Over 150 million shares	81,500	83,500

CAPITAL MARKET

	Total shares outstanding	Annual fee before the proposed change	Annual fee effective January 1, 2021
Equity securities other than, in part, ADRs, Closed-end Funds and Limited Partnerships.	Up to 10 million shares	$44,000	$45,000
	10+ to 50 million shares	58,000	59,500
	Over 50 million shares	79,000	81,000
ADRs	Up to 10 million ADRs and other listed equity securities	44,000	45,000
	Over 10 million ADRs and other listed equity securities	53,000	54,500
Closed-end Funds	Up to 50 million shares	32,000	33,000
	50+ to 100 million shares	53,000	54,500
	100+ to 250 million shares	79,000	81,000
	Over 250 million shares	105,000	107,500
Limited Partnerships	Up to 75 million shares	32,000	33,000
	Over 75 million shares	39,500	40,500

[3] REITs are subject to the same fee schedule as other equity securities; however for the purpose of determining the total shares outstanding, shares outstanding of all members in a REIT Family listed on the same Nasdaq market tier may be aggregated. Similarly, for the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed on the Nasdaq Global Market or the Nasdaq Capital Market. *See* Listing Rules 5910(b)(2) and 5920(b)(2).

[4] The proposed fee change reflects about a 2.5% increase rounded to the nearest $500.

Nasdaq also proposes to update the maximum fee applicable to a Closed-End Fund family to $107,500 and the maximum fee applicable to a REIT Family listed on the Nasdaq Global Market and the Nasdaq Capital Market to $167,000 and $81,000, respectively, to reflect the proposed fee change for other equity securities, as described above.[5]

Nasdaq also proposes to update the all-inclusive annual listing fees for companies whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, as described in IM–5101–2, (''Acquisition Companies'') listing on the Nasdaq Global Market to continue to keep such fees identical to the fees the Capital Market Acquisition Companies are charged.[6]

Finally, Nasdaq proposes to update amounts in examples in Listing Rules 5910(b)(3)(D) and 5920(b)(3)(D), clarifying the application of the rules for companies transferring between Nasdaq tiers, to align the fee amounts with the fees applicable in year 2022.

As described below, Nasdaq proposes to make the aforementioned fee increases to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to issuers.

Nasdaq also proposes to remove references to fees that are no longer applicable because they were superseded by new fee rates specified in the rule text.

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 1, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the various listing fees[9] as set forth above because of the increased costs incurred by Nasdaq since it established the current rates. In that regard, the Exchange notes that its general costs to support our listed companies have increased, including due to price inflation. The Exchange also continues to expand and improve the services it provides to listed companies as well as the technology and the virtual experience available with the Nasdaq MarketSite. Nasdaq has also invested to create additional outdoor event space at its New York Headquarters, and separately, to secure a license that can be used by listed companies to hold events in Times Square. Internationally, Nasdaq's offices in London, Beijing, Toronto and Sydney have been upgraded to a modern design with new meeting rooms equipped with technology that houses the digital equipment needed for remote conferencing, presentations, collaborative review, or displays and signage thus enhancing the listed companies experience.

Nasdaq also believes that it is not unfairly discriminatory and represents an equitable allocation of reasonable fees to amend Listing Rules 5910(b)(2) and 5920(b)(2) to increase the various listing fees while rounding the increase to the nearest $500 as set forth above because such rounding represents de minimis variation in fees for Nasdaq listed companies. In addition, Nasdaq has used the same methodology since the adoption of the all-inclusive annual listing fee schedule and all annual listing fees under Listing Rules 5910(b)(2) and 5920(b)(2) are rounded to $500.

The proposed change to update the fees applicable to Acquisition Companies listed on the Nasdaq Global Market, update amounts in examples clarifying the application of the rules for companies transferring between Nasdaq tiers, and update the maximum fee applicable to a Closed-End Fund family and the maximum fee applicable to a REIT Family to reflect the proposed fee change for other equity securities, as described above, is not unfairly discriminatory because it merely reflects the change in fees without changing the substance of the rule.[10]

Finally, Nasdaq notes that it operates in a highly competitive market in which market participants can readily switch exchanges if they deem the listing fees excessive.[11] In such an environment, Nasdaq must continually review its fees to assure that they remain competitive.

The proposed removal of text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues, both within the U.S. and internationally. For this reason, Nasdaq does not believe that the proposed rule change will result in any burden on competition for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12]

At any time within 60 days of the filing of the proposed rule change, the

[5] *See* footnote 3 above.

[6] As proposed, Nasdaq would update Rule 5910(b)(2)(F) to have the following all-inclusive annual fee schedule applicable to Global Market Acquisition Companies, based on the number of shares outstanding: Up to 10 million shares outstanding, $45,000; between 10,000,001 and 50 million shares outstanding, $59,500; over 50 million shares outstanding, $81,000. These are the same proposed fees charged Capital Market Acquisition Companies under Rule 5920(b)(2)(A). *See* Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021) (SR–NASDAQ–2021–055). In this filing Nasdaq explained its belief that Acquisition Companies listed on the Nasdaq Global Market receive the same services as Acquisition Companies listed on the Nasdaq Capital Market making it appropriate for Nasdaq to charge such companies the same fees.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] Effective January 1, 2021, Nasdaq modified the fee schedule for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets. Securities Exchange Act Release No. 90519 (November 25, 2020), 85 FR 77324 (December 1, 2020) (SR–NASDAQ–2020–072).

[10] *See* Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021) (explaining, among other things, why Nasdaq believes that it is not unfairly discriminatory to charge Acquisition Companies listed on the Nasdaq Global Market the same fees as fees charged Acquisition Companies listed on the Nasdaq Capital Market). *See* also footnote 6, above.

[11] The Justice Department has noted the intense competitive environment for exchange listings. *See* ''NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2021–091 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2021–091. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–091 and should be submitted on or before December 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26624 Filed 12–8–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34433; 812–15278]

Bridge Builder Trust, et al.

December 3, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under Section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(c) of the Act.

SUMMARY OF APPLICATION: The requested exemption would permit a Trust's board of trustees (the ''Board'') to approve new sub-advisory agreements and material amendments to existing sub-advisory agreements without complying with the in-person meeting requirement of Section 15(c) of the Act.

APPLICANTS: Bridge Builder Trust, Edward Jones Money Market Fund, Olive Street Investment Advisers, LLC, Passport Research, LTD.

FILING DATES: The application was filed on October 29, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Sean Graber, Esq., *sean.graber@morganlewis.com*; and *evan.posner@edwardjones.com*.

FOR FURTHER INFORMATION CONTACT: Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and condition, please refer to Applicants' application, dated October 29, 2021, which may be obtained via the Commission's website by searching for the file number, using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26622 Filed 12–8–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34434; 812–15266]

PGIM Private Real Estate Fund, Inc., et al.

December 3, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based service and distribution fees, and early withdrawal charges (''EWCs'').

APPLICANTS: PGIM Private Real Estate Fund, Inc. (''Initial Fund''), PGIM Investments, LLC (''Adviser''), and

[13] 17 CFR 200.30–3(a)(12).

Prudential Investment Management Services LLC (''Distributor'').

FILING DATES: The application was filed on September 24, 2021, and amended on November 22, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: c/o Benjamin Wells, by email to *bwells@stblaw.com.*

FOR FURTHER INFORMATION CONTACT: Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and condition, please refer to Applicants' application, dated November 22, 2021, which may be obtained via the Commission's website by searching for the file number, using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–26621 Filed 12–8–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17143 and #17144; New Jersey Disaster Number NJ–00062]

Presidential Declaration Amendment of a Major Disaster for the State of New Jersey

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4614–DR), dated 09/05/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 12/06/2021.

Physical Loan Application Deadline Date: 01/05/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

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: The notice of the President's major disaster declaration for the State of New Jersey, dated 09/05/2021, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/05/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–26654 Filed 12–8–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17145 and #17146; New Jersey Disaster Number NJ–00063]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of New Jersey

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4614–DR), dated 09/05/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 12/02/2021.

Physical Loan Application Deadline Date: 12/13/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 09/05/2021, is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to 12/13/2021.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–26647 Filed 12–8–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17147 and #17148; New York Disaster Number NY–00208]

Presidential Declaration Amendment of a Major Disaster for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4615–DR), dated 09/05/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 12/06/2021.

Physical Loan Application Deadline Date: 01/04/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

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: The notice of the President's major disaster declaration for the State of New York, dated 09/05/2021, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/04/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–26650 Filed 12–8–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0172]

Commercial Driver's License Skills Testing: Application for Exemption; American Association of Motor Vehicle Administrators (AAMVA)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Application for exemption; request for comments.

SUMMARY: FMCSA announces that the American Association of Motor Vehicle Administrators (AAMVA) requests a multi-year exemption to allow the State Driver Licensing Agencies (SDLAs) in Maryland, New Hampshire, and Virginia to continue using the revised Commercial Driver's License (CDL) pre-trip vehicle inspection and revised control skills test procedures, after current field tests being conducted as part of a pilot program under a waiver granted by the Federal Motor Carrier Safety Administration (FMCSA) have been completed. AAMVA states that the requested exemption would enable these States to continue operating under the pilot model without the burden of reverting to the older CDL test model requiring cost and delays associated with the re-configuration of testing locations and retraining of CDL test examiners. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before January 10, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2021–0172 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2021–0172) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at 202–366–2722 or by e-mail at *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2021–0172), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2021–0172'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and

the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The Commercial Driver's License (CDL) requirements in 49 CFR part 383, subpart G, Required Knowledge and Skills, specifically section 49 CFR 383.133(c)(1)–(2) require the following: *Test methods:* (1) A State must develop, administer and score the skills tests based solely on the information and standards contained in the driver and examiner manuals referred to in § 383.131(a) and (b); and (2) A State must use the standardized scores and instructions for administering the tests contained in the examiner manual referred to in § 383.131(b).

Applicant's Request

On October 25, 2021, the American Association of Motor Vehicle Administrators (AAMVA) requested that FMCSA consider granting the States of Maryland, New Hampshire, and Virginia (the pilot States) a multi-year exemption to allow these 3 pilot States to continue using revised CDL vehicle inspection and revised control skills procedures. The requested exemption would enable these pilot States to continue operating under the pilot model without the burden of reverting to the older CDL test model requiring cost and delays associated with the re-configuration of testing locations and retraining of CDL test examiners.

On August 16, 2021, AAMVA requested a 90-day waiver from 49 CFR 383.133 to enable the pilot States to complete field tests of the new CDL skills test procedures. This waiver request was subsequently granted on August 31, 2021 for the period of September 1, 2021 through December 1, 2021, after FMCSA determined that CDL skills testing conducted under the terms and conditions of the waiver would achieve an equivalent level of safety to the current regulations. AAMVA now seeks to allow the pilot States to continue operating under the revised CDL vehicle inspection and revised control skills procedures once the field test waiver period has concluded. According to AAMVA, the requested exemption ''would permit these States to continue CDL testing without the burden of reverting back to the older CDL test model which would require cost and delays associated with re-configuration of testing locations and retraining of CDL examiners.''

AAMVA also notes that the requested exemption would allow continued use of the revised testing system by the pilot States operating under the current waiver while AAMVA and FMCSA analyze the field test results and determine if any additional adjustments warrant further review by the Agency and testing by these pilot States. If the Agency adopts the modernized test, the requested exemption will minimize the back-and-forth and confusion of rotating between CDL test models in the 3 pilot States during the exemption period. If FMCSA does not accept the modernized test, the pilot States would revert to the current system but would need up to 30 days to transition and notify industry of the return to the current CDL test model. A copy of the AAMVA exemption application is in the docket listed at the beginning of this notice.

IV. Equivalent Level of Safety

In granting AAMVA's original waiver request from 49 CFR 383.133, the FMCSA determined that a waiver of the traditional pre-trip inspection and basic vehicle control skills testing requirements would not have an adverse impact on safety because the revised skills test will provide a comparable level of rigor as the current tests to ensure that participating CDL applicants demonstrate a level of knowledge and skills that prove they can operate commercial motor vehicles safely. AAMVA requested the exemption be granted under the same terms and conditions as the waiver. Under the terms of the waiver, the tests must be administered in a controlled setting, located within States' skills testing facilities. All other safety requirements, such as requiring the applicant to pass the traditional on-road test segment of the skills test, continue to apply. In addition, the pilot States may administer the revised examinations only to applicants who are domiciled in their respective States. The pilot States must continue to be prohibited from issuing CDLs to field test applicants unless the applicant passes all the required segments of the skills test.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on the American Association of Motor Vehicle Administrators (AAMVA) application for an exemption from 49 CFR 383.133(c)(1)–(2). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–26641 Filed 12–8–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified matching program.

SUMMARY: This is an 18-month re-establishment computer matching agreement (CMA) with the Defense Manpower Data Center (DMDC), Department of Defense (DoD) and the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA), regarding Veterans who are in return to active duty and in receipt of compensation or pension benefits. The purpose of this CMA is to re-establish the agreement between VA, Veterans Benefits Administration (VBA) and the DoD, DMDC. DoD will disclose information about individuals who have returned to active duty. VBA will use this information as a match for recipients of Compensation and Pension benefits for adjustments of awards.

DATES: Comments on this matching program must be received no later than January 10, 2022. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810

Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''CMA #2 Return to Active Duty #87''. Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Charlene Small (VBA), Program Analyst, Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420, 202–306–8914, *Charlene.small@va.gov.*

SUPPLEMENTARY INFORMATION: This agreement continues an arrangement for a periodic computer-matching program between the United States Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA) as the matching recipient agency and the Department of Defense (DoD), Defense Manpower Data Center (DMDC) as the matching source agency. This agreement sets forth the responsibilities of VBA and DoD with respect to information disclosed pursuant to this agreement and considers both agencies' responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, and the regulations promulgated thereunder, including computer matching portions of a revision of OMB Circular No. A–130, 65 FR 77677 dated December 12, 2000.

PARTICIPATING AGENCIES:

VA, VBA as the matching recipient agency and DoD, DMDC as the matching source agency.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

The legal authority for conducting the matching program for use in the administration of VA's Compensation and Pension Benefits Programs is contained in 38 U.S.C. 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The head of any Federal department or agency shall provide, pursuant to 38 U.S.C. 5106, such information as requested by VA for the purpose of determining eligibility for, or amount of benefits, or verifying other information with respect thereto.

PURPOSE(S):

The purpose of this matching program between VBA and DoD is to identify those Veterans and VA beneficiaries who are in receipt of certain VA benefit payments and have returned to active duty. VBA has the obligation to reduce or suspend compensation and pension benefit payments to Veterans who have returned to active duty. VBA will use the DoD records provided in the match to update the master records of Veterans and VA beneficiaries receiving benefits and to adjust their VA benefits, accordingly, if needed.

CATEGORIES OF INDIVIDUALS:

(1) Veterans who have applied for compensation for service-connected disability under 38 U.S.C. Chapter 11.

(2) Veterans who have applied for nonservice-connected disability under 38 U.S.C. Chapter 15.

(3) Veterans entitled to burial benefits under 38 U.S.C. Chapter 23.

(4) Surviving spouses and children who have claimed pensions based on nonservice-connected death of a Veteran under 38 U.S.C. Chapter 15.

(5) Surviving spouses and children who have claimed death compensation based on service-connected death of a Veteran under 38 U.S.C. Chapter 11.

(6) Surviving spouses and children who have claimed dependency and indemnity compensation for service-connected death of a Veteran under 38 U.S.C. Chapter 13.

(7) Parents who have applied for death compensation based on service connected death of a Veteran under 38 U.S.C. Chapter 11.

(8) Parents who have applied for dependency and indemnity compensation for service-connected death of a Veteran under 38 U.S.C. Chapter 13.

(9) Individuals who applied for educational assistance benefits administered by VA under title 38 of the U.S. Code.

(10) Individuals who applied for educational assistance benefits maintained by the Department of Defense under title 10 of the U.S. Code that are administered by VA.

(11) Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Public Law 98–77.

(12) Any VA employee who generates or finalizes adjudicative actions using the Benefits Delivery Network (BDN) or the Veterans Service Network (VETSNET) computer processing systems.

(13) Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Service Members Occupational Conversion and Training Act of 1992, Public Law 102–484.

(14) Representatives of individuals covered by the system.

CATEGORIES OF RECORDS:

The record, or information contained in the record, may include:

(1) Identifying information (*e.g.,* name, address, social security number);

(2) Military service and active duty separation information (*e.g.,* name, service number, date of birth, rank, sex, total amount of active service, branch of service, character of service, pay grade, assigned separation reason, service period, whether Veteran was discharged with a disability, reenlisted, received a Purple Heart or other military decoration);

(3) Payment information (*e.g.,* Veteran payee name, address, dollar amount of readjustment service pay, amount of disability or pension payments, number of non-pay days, any amount of indebtedness (accounts receivable) arising from title 38 U.S.C. benefits and which are owed to the VA);

(4) Medical information (*e.g.,* medical and dental treatment in the Armed Forces including type of service connected disability, medical facilities, or medical or dental treatment by VA health care personnel or received from private hospitals and health care personnel relating to a claim for VA disability benefits or medical or dental treatment);

(5) Personal information (*e.g.,* marital status, name and address of dependents, occupation, amount of education of a Veteran or a dependent, dependent's relationship to Veteran);

(6) Education benefit information (*e.g.,* information arising from utilization of training benefits such as a Veteran trainee's induction, reentrance or dismissal from a program or progress and attendance in an education or training program);

(7) Applications for compensation, pension, education and vocational rehabilitation benefits and training—which may contain identifying information, military service and active duty separation information, payment information, medical and dental information, personal and education benefit information relating to a Veteran or beneficiary's incarceration in a penal institution (*e.g.,* name of incarcerated Veteran or beneficiary, claims folder number, name and address of penal institution, date of commitment, type of offense, scheduled release date, Veteran's date of birth, beneficiary relationship to Veteran and whether Veteran or beneficiary is in a work release or half-way house program, on parole or has been released from incarceration);

(8) VA employee's BDN or VETSNET identification numbers, the number and kind of actions generated and/or

finalized by each such employee, the compilation of cases returned for each employee.

SYSTEM(S) OF RECORDS:

Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58 VA 21/22/28), published at 86 FR 61858 (November 8, 2021), last amended at 84 FR 4138 on February 14, 2019.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Joseph S. Stenaka, Executive Director for Information Security Operations, Chief Privacy Officer and Chair of the VA Data Integrity Board approved this document on November 30, 2021 for publication.

Dated: December 3, 2021.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

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Part II

Securities and Exchange Commission

17 CFR Parts 202, 229, 230, et al.
Filing Fee Disclosure and Payment Methods Modernization; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 229, 230, 232, 239, 240, 270 and 274

[Release Nos. 33–10997; 34–93285; IC–34396; File No. S7–20–19]

RIN 3235–AL96

Filing Fee Disclosure and Payment Methods Modernization

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments that will modernize filing fee disclosure and payment methods. We are amending most fee-bearing forms, schedules, statements, and related rules to require each filing fee table and accompanying disclosure to include all required information for fee calculation in a structured format. The amendments will add options for fee payment via Automated Clearing House (''ACH'') and debit and credit cards, and eliminate options for fee payment via paper checks and money orders. The amendments are intended to improve filing fee preparation and payment processing by facilitating both enhanced validation through filing fee structuring and lower-cost, easily routable payments through the ACH and debit and credit card payment options. Finally, the Commission is adopting other amendments to enhance the efficiency of the fee process.

DATES:

Effective dates: The final rules are effective on January 31, 2022, except for amendments to 17 CFR 202.3a, 17 CFR 230.111, 17 CFR 240.0–9, and 17 CFR 270.0–8, which are effective on May 31, 2022.

Compliance dates: See Section II.A.6 for further information on transitioning to the final rules.

FOR FURTHER INFORMATION CONTACT: Luba Dinits, Senior Accountant, Office of Financial Management, at (202) 551–3839, Mark W. Green, Senior Special Counsel, Division of Corporation Finance, at (202) 551–3430; Amanda Hollander Wagner, Branch Chief, or Amy Miller, Senior Counsel, Division of Investment Management, at (202) 551–6792; or R. Michael Willis, Associate Director, Office of Data Science and Innovation, Division of Economic and Risk Analysis, at (202) 551–6600.

SUPPLEMENTARY INFORMATION: We are adopting amendments to:

Commission reference		CFR citation (17 CFR)
Informal and other Procedures	Rule 3a	§ 202.3a
Regulation S–K	Item 601	§ 229.601
Regulation S–T	Rule 13	§ 232.13
	Rule 405	§ 232.405
	Rule 408	§ 232.408
Securities Act of 1933 [1] (''Securities Act'')	Rule 111	§ 230.111
	Rule 415	§ 230.415
	Rule 424	§ 230.424
	Rule 456	§ 230.456
	Rule 457	§ 230.457
	Rule 473	§ 230.473
	Form S–1	§ 239.11
	Form S–3	§ 239.13
	Form S–8	§ 239.16b
	Form S–11	§ 239.18
	Form N–14	§ 239.23
	Form S–4	§ 239.25
	Form F–1	§ 239.31
	Form F–3	§ 239.33
	Form F–4	§ 239.34
	Form F–10	§ 239.40
	Form SF–1	§ 239.44
	Form SF–3	§ 239.45
Securities Exchange Act of 1934 [2] (''Exchange Act'')	Rule 0–9	§ 240.0–9
	Rule 0–11	§ 240.0–11
	Rule 13e–1	§ 240.13e–1
	Schedule 13E–3	§ 240.13e–100
	Schedule 13E–4F	§ 240.13e–102
	Schedule 14A	§ 240.14a–101
	Schedule 14C	§ 240.14c–101
	Schedule TO	§ 240.14d–100
	Schedule 14D–1F	§ 240.14d–102
Investment Company Act of 1940 [3] (''Investment Company Act'')	Rule 0–8	§ 270.0–8
	Form 24F–2	§ 274.24
Securities Act and Investment Company Act	Form N–2	§§ 239.14 and 274.11a–1

[1] 15 U.S.C. 77a *et seq.*
[2] 15 U.S.C. 78a *et seq.*
[3] 15 U.S.C. 80a–1 *et seq.*

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I. Introduction and Background

On October 24, 2019, the Commission proposed amendments to modernize filing fee disclosure and payment methods.[1] Specifically, the Commission proposed to amend most fee-bearing forms, schedules, statements, and related rules to require each filing fee table and accompanying disclosure to include all required information for filing fee calculation in a structured format. The Commission also proposed to add an option for filing fee payment via ACH and eliminate the options for filing fee payment via paper checks and money orders. The proposed amendments were intended to improve filing fee preparation and payment processing by facilitating both enhanced validation through filing fee structuring and lower-cost, easily routable payments through the ACH payment option. Finally, the Commission proposed other amendments to enhance the efficiency of the filing fee process.[2]

Commenters generally supported the proposed structuring and payment option amendments but some had related observations and suggestions.[3] After reviewing and considering the public comments and recommendations, we are adopting the amendments largely as proposed. As we discuss further below, in certain cases we are adopting the proposed rules with modifications that are intended to address comments received or otherwise improve upon the proposals.

The current methods by which filers and the Commission staff process and validate EDGAR[4] filing fee information within the filing are highly manual and labor-intensive.[5] Filing-fee related information is generally not machine-readable and the underlying components used for the calculation are not always required to be reported.[6] Filing fee calculation can be difficult and result in errors when transactions are complex or a filer is engaged in a number of transactions or attempts to use previously paid filing fees to offset the amount due or carry forward previously registered securities to a new registration statement. Other errors can occur because the filer must manually enter certain data elements relevant to the filing fee calculation in the body of the filing and, during the course of preparing the filing for EDGAR submission, the filing's ''header.'' [7] The filing fee-related data is thus present in the EDGAR header, the body of the document being filed, or both. The manual process of entering the same data elements in more than one place increases the possibility of filer errors, such as re-keying errors or errors where information is modified in one location but not the other. Correcting errors or reconciling inconsistencies in filing fee calculations can increase burdens on both the filer and the Commission staff.

Currently, the Commission staff conducts a manual review of the filing fee information for every fee-bearing filing that is filed with the Commission. When there are discrepancies between filing fee information appearing in the header and in the filing fee table on the cover page of the filing, the staff must resolve the discrepancy and often has to contact the filer to do so. We expect the final amendments will make the filing fee payment validation process faster and more efficient by enabling the staff to use automated tools to help validate payment information with respect to complicated situations. We also expect that improvements in the payment validation process made possible by the tagging of the filing fee table and accompanying information with pre-submission validation by the filer will provide more certainty to registrants

[1] *See Filing Fee Disclosure and Payment Methods Modernization,* Release No. 33–10720 (Oct. 24, 2019) [84 FR 71580 (Dec. 27, 2019)] (''Proposing Release'').

[2] The Commission assesses filing fees pursuant to Section 6(b) of the Securities Act [15 U.S.C. 77f(a)(b)] and Sections 13(e) and 14(g) of the Exchange Act [15 U.S.C 78m(e) and 78n(g)]. The filing fees are assessed on companies' filing documents related to transactions, including registered securities offerings, tender offers and merger or acquisition transactions.

The Commission also assesses registration fees for registered offerings by investment companies (''funds''), with fees assessed on an annual basis for open-end funds and unit investment trusts (''UITs''). Pursuant to Section 24(f)(2) of the Investment Company Act [15 U.S.C. 80a-24(f)(2)], open-end funds and UITs must file information about the computation of these registration fees and other information on Form 24F–2. Effective August 1, 2021, registered closed-end funds that operate as ''interval funds'' are also required to file registration fee information on Form 24F–2, and as of February 1, 2022, all Form 24F–2 filers (interval funds, as well as open-end funds and UITs) will be required to submit Form 24F–2 to the Commission in a structured eXtensible Markup Language (''XML'') format. *See Securities Offering Reform for Closed-End Investment Companies,* Investment Company Act Release No. 33–10771 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020)] (''Closed-End Fund Offering Reform Adopting Release''). An ''interval fund'' is a type of registered closed-end fund or business development company (''BDC'') that makes periodic repurchase offers pursuant to Investment Company Act Rule 23c–3.

Additionally, registered closed-end funds and BDCs that are not interval funds, as well as small business investment companies (''SBICs'') that register securities under the Securities Act, generally must pay registration fees at the time of filing a registration statement. *See* Section 6(b)(1) of the Securities Act; *see also* Closed-End Fund Offering Reform Adopting Release, *supra* note 2, at 73, n.198. SBICs are privately-owned and -managed investment companies that are licensed and regulated by the Small Business Administration (''SBA'').

[3] One commenter also supported the proposed centralization of filing fee information. Commenters did not address the other proposed amendments. Comment letters related to the Proposing Release are available at *https://www.sec.gov/comments/s7-20-19/s72019.htm.*

[4] The Commission receives filings through its Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.

[5] Validation is the process of checking for conformance with certain requirements. Under the final rules, once filers structure their filing fee information, we expect the EDGAR system to automatically validate a filing fee based on the number of shares registered and maximum offering price per share by multiplying those amounts by each other and the applicable filing fee rate.

[6] For example, as further discussed below, in connection with a business combination, filing fee-specific disclosures of the market value of securities to be received by a registrant or cash to be paid or received by the registrant are not expressly required to be disclosed even though they affect the filing fee calculation. *See infra* note 30.

[7] Filings are submitted on EDGAR through the EDGARLink Online tool that is made available by the Commission to assemble, validate and submit filings on EDGAR. As part of submitting the filing, the registrant enters submission data that becomes part of that filing's header.

that the proper filing fee has been calculated and paid.

We are amending most fee-bearing forms, schedules and statements [8] to provide that each filing's calculation of filing fee tables, together with related explanatory notes to the filing fee tables, include all required information for filing fee calculation in a structured format using Inline eXtensible Business Reporting Language (''XBRL'').[9] Presenting filing fee-related information in a structured format will enable:

- Efficient automated access to and processing of, information relevant to filing fee calculation; and
- Eliminating both the need to enter duplicate filing fee information in the header and the possibility of inconsistent filing fee information between the header and the body of the filing.[10]

These amendments will improve the filing fee preparation, disclosure, validation, assessment, and collection processes.

We also are adding options for filing fee payment via ACH and debit and credit cards, which offer more efficient and accurate filing fee payment processing than checks and money orders through standardized filing fee payment identification fields, and eliminating the options for filing fee payment via paper checks and money orders. These amendments will modernize filing fee payment methods and increase efficiency in processing filing fee payments.

II. Final Amendments

A. Fee-Bearing Form Content and Structuring

1. Overview of the Amendments

The Commission proposed to require filers to include all required information for filing fee calculation in a structured format.[11] In this regard, the Commission observed that the preparation, disclosure, validation, assessment, and collection process would be more effectively automated by facilitating access to and processing of a broad range of filing fee calculation-related information, saving filers and the Commission resources by reducing the need to manually access the relevant data or confirm it with filers.[12]

The Commission proposed to require the use of Inline XBRL for the structured data.[13] The Commission noted that this format would result in machine-readable data that could then be used to more effectively automate the filing fee preparation, disclosure, assessment, and verification processes.

We are adopting the filing fee-bearing form content and structuring amendments substantially as proposed with the following principal modifications:

- To streamline the presentation of filing fee-related information and potentially facilitate any future changes in the structuring technology applied to it, the amendments move the filing fee-related information to a separate exhibit document (''filing fee exhibit'') rather than requiring it on the filing's cover page as proposed and make related conforming changes;
- To facilitate filing fee determination, information presentation, capacity tracking, and structuring and EDGAR validation, the final rules will require more detailed tabular disclosure of certain information that, under the proposal, registrants would have presented in narrative format or in the header information for a filing. The final rules will include tabular disclosure of any fee offsets claimed by the registrant and tabular disclosure if the registrant is filing a single prospectus that relates to two or more registration statements;
- To take into account recent amendments made to Rule 424 and Forms S–1, S–3, F–1 and F–3 that enable certain issuers of exchange-traded vehicle securities to register an indeterminate amount of those securities and pay filing fees on an annual net basis,[14] revise these and, as appropriate, other provisions to conform to the other filing fee disclosure and payment methods amendments;
- To facilitate filing fee determination, information presentation, and capacity tracking, revise Forms SF–1 and SF–3 to conform their filing fee content and presentation requirements, as applicable, to those of other fee-bearing forms we are amending and permit (but not require) filers to submit the filing fee-related information in Inline XBRL; and
- For consistency with our proposed approach regarding certain Securities Act forms that require filing fee disclosures, but which are filed relatively infrequently by issuers that may not otherwise be subject to Commission structuring requirements, we are not adopting the proposed content or structuring amendments for Form N–5.

The specific proposed and final form, schedule and related changes, along with our consideration of public comments, are discussed in detail below.

2. Affected Forms

a. Proposed Amendments

The Commission proposed to amend Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, and F–10 under the Securities

[8] *See* Section II.A.5 regarding the fee-bearing forms we are amending and those we are not amending.

[9] Structured data is data that is tagged to make it machine-readable, facilitating its use by investors and other market participants, such as data aggregators (*i.e.,* entities that, in general, collect, package, and resell data).

[10] The elimination of duplicate entries of information in the header and body of the filing will not be immediate. It will occur over time as filers become subject to the requirement to present filing fee-related information in a structured format and we program EDGAR accordingly.

[11] This would include information that today is included in a text-only format, and some information prepared by filers but the disclosure of which is currently optional.

[12] As part of submitting the filing, the EDGARLink Online program requires filers to manually enter a limited number of basic filing fee calculation components such as amount being registered, proposed maximum offering price per unit or in the aggregate and, where applicable, offset amount, which become part of the filing's header. EDGARLink Online then performs a filing fee rate calculation based on that information. EDGAR's filing fee applications will perform similar calculations using the filing fee-related information that we are requiring to be tagged in Inline XBRL. Eventually, this structured information may be used in these filing fee applications to confirm that a claimed filing fee offset is available based on the amount of remaining unsold securities registered on a prior filing.

[13] In 2009, the Commission adopted rules requiring operating company financial statements and mutual fund risk/return summaries to be submitted in XBRL entirely within an exhibit to a filing. *Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)] as corrected by Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666 (Apr. 7, 2009)] (''Operating Company Financial Statement Tagging Release''). In 2018, the Commission refined the requirement by requiring, on a phased-in basis, operating company and mutual fund filers to submit this information using Inline XBRL, which embeds the tagged information in the document itself, rather than in an exhibit. *See Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)] (''Inline XBRL Release'').

Last year, the Commission adopted structured data reporting requirements for variable annuity and variable life insurance contracts, registered closed-end funds, and BDCs. *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Investment Company Act Release No. 33814 (Mar. 11, 2020) [85 FR 25964 (May 1, 2020)] (''Variable Contract Summary Prospectus Adopting Release'') (requiring variable contracts to use Inline XBRL to submit certain required prospectus disclosures); Closed-End Fund Offering Reform Adopting Release, *supra* note 2 (requiring BDCs to submit financial statement information, and registered closed-end funds and BDCs to tag registration statement cover page information and specified prospectus disclosures using Inline XBRL).

[14] *See* Closed-End Fund Offering Reform Adopting Release, *supra* note 2.

Act [15] and Schedules 13E–3,[16] 13E–4F,[17] 14A,[18] 14C,[19] TO,[20] and 14D–1F [21] under the Exchange Act (collectively, the ''Affected Securities Act and Exchange Act Forms and Schedules'') and Exchange Act Rule 13e–1 [22] to require disclosure, and structuring of all information necessary to calculate the filing fee. The Commission also proposed to amend Forms N–2,[23] N–5,[24] and N–14 [25] to require filers to submit their filing fee information in a structured data format. Specifically, the Commission proposed to require filers to structure the filing fee-related information in the Affected Securities Act and Exchange Act Forms and Schedules and Forms N–2, N–5, and N–14 in Inline XBRL.

b. Comments on the Proposed Amendments

As further discussed below,[26] one commenter addressed the scope of fee-bearing documents the Commission proposed to revise.[27] The commenter stated that the Commission should structure all fee-bearing documents' filing fee information to enable consistency of preparation and usage.

c. Final Amendments

We are adopting the amendments substantially as proposed but with several modifications. Consistent with the proposal, we are amending the Affected Securities Act and Exchange Act Forms and Schedules, Rule 13e–1, and Forms N–2 and N–14 to require disclosure and structuring of all information necessary to calculate the filing fee. In a change from the proposal, we are extending the content and location amendments, but not the structuring amendments, to Forms SF–1 and SF–3.[28] In another change, for reasons similar to those for not applying the amended filing fee disclosure and new structured data requirements to certain other Securities Act forms, we are not adopting the proposed amendments to Form N–5.[29] We further discuss this modification and the comment regarding the scope of the fee-bearing document amendments in Section II.A.5.

3. Content and Location of Filing Fee Information

a. Proposed Amendments

Currently, filing fee-related information is presented primarily on the cover page of fee-bearing filings, but also appears in a submission header. Regardless of where it appears, however, the information currently required to be disclosed does not always include all components needed to calculate the filing fee and, as a result, the Commission staff may need to contact the filer for more information.[30] The Commission proposed to require the cover page of fee-bearing filings to include all of the information necessary to calculate the filing fee,[31] which would expedite staff review of filing fee calculations, provide more certainty to filers that the proper filing fee has been paid and reduce burdens on filers that otherwise would need to respond to staff inquiries. As more fully described in the Proposing Release, the proposed amendments would further these objectives by:

- Revising and adding filing fee tables;
- Adding, clarifying and otherwise revising instructions regarding filing fee table presentation, calculations and related disclosure content and presentation;
- Revising Rule 424(g) [32] regarding the completeness and location of filing

[15] These forms are used by operating companies to register offers and sales of securities under the Securities Act. They differ primarily in regard to issuer and transaction eligibility requirements, and location and nature of disclosure required.

[16] Section 240.13e–3 (Rule 13e–3 under the Exchange Act) requires an issuer or affiliate to file a Schedule 13E–3 when either plans to engage in a transaction that could cause the loss of a reporting obligation under the Exchange Act or loss of a national securities exchange listing with respect to a class of the issuer's equity securities.

[17] Schedule 13E–4F may be filed instead of Schedule TO in order to comply with § 240.13e–4 (Rule 13e–4 under the Exchange Act) where a Canadian operating company issuer meeting specified requirements is subject to Exchange Act reporting requirements and the issuer or, in limited circumstances, an affiliate makes a tender offer related to a class of the issuer's equity securities.

[18] Schedule 14A is required to be filed by an issuer or other person or entity that solicits proxy authority with respect to securities registered under Section 12 of the Exchange Act to comply with Exchange Act Rules 14a–3 and 14a–6.

[19] Schedule 14C is required to be filed by issuers to comply with §§ 240.14c–2 and 240.14c–5 (Exchange Act Rules 14c–2 and 14c–5) in connection with corporate actions to be authorized by holders of securities registered under Section 12 of the Exchange Act where no proxy authorization or consent is solicited on behalf of the issuer for the corporate action to be taken.

[20] Schedule TO is required to be filed by Exchange Act Rule 13e–4 and § 240.14d–3 (Exchange Act Rule 14d–3) in connection with a tender offer for a class of an issuer's equity securities registered under Section 12 of the Exchange Act (if the tender offer involves a going-private transaction, a combined Schedule TO and Schedule 13E–3 may be filed with the Commission under cover of Schedule TO).

[21] Schedule 14D–1F can be used to satisfy requirements otherwise applicable under Regulations 14D and 14E pursuant to § 240.14d–1(b) (Exchange Act Rule 14d–1(b)) with respect to specified Canadian operating company tender offer subjects.

[22] Rule 13e–1 provides that an issuer that has received a notice that it is the subject of a tender offer is prohibited from purchasing any of its equity securities during the tender offer unless the issuer first files a statement with the Commission disclosing specified information related to the planned purchases and pays a specified filing fee.

[23] Form N–2 is used by closed-end management investment companies to register under the Investment Company Act and to offer their shares under the Securities Act. Form N–2 is also used by BDCs to offer their shares under the Securities Act. A BDC is a type of closed-end fund that does not register under the Investment Company Act, but elects to be subject to the provisions of Sections 55 through 65 of the Investment Company Act. *See* Section 2(a)(48) of the Investment Company Act.

[24] Form N–5 is used by SBICs to register under the Investment Company Act and to offer their shares under the Securities Act.

[25] Form N–14 is used by management investment companies and BDCs to register securities to be issued in certain types of transactions, including certain fund mergers, under the Securities Act. *See* General Instruction A to Form N–14 for a list of the transactions for which the securities to be issued must be registered on Form N–14.

[26] *See* Section II.A.5 regarding the scope of the filing fee bearing document proposed and final amendments.

[27] *See* letter from XBRL US (Feb. 25, 2020) (''XBRL US''). The commenter states that its members ''include accounting firms, public companies, software, data and service providers, as well as other nonprofits and standards organizations.''

[28] We are, however, permitting filers of Forms SF–1 and SF–3 to submit filing fee-related information in Inline XBRL. *See* Section II.A.5 and Item 601(b)(107) of Regulation S–K, as adopted.

[29] *See* Section II.A.5 regarding the scope of the fee bearing document proposed and final amendments.

[30] As previously noted, EDGARLink Online requires filers to manually enter basic filing fee calculation components and then performs a filing fee rate calculation on that basis. The basic filing fee calculation components, however, may themselves be based on calculations using information that is not disclosed. For example, current Securities Act Rule 457(f) generally requires a business combination transaction filing fee to be based on, as applicable, (1) the market value of the securities to be received by the registrant or cancelled in the transaction as established by one of multiple specified methods; (2) cash to be received by the registrant in connection with the transaction (the amount to be added to the value of the securities to be received by the registrant or cancelled); and (3) cash to be paid by the registrant in connection with the exchange or transaction (the amount to be deducted from the value of the securities to be received by the registrant in connection with the transaction). Yet, neither Rule 457 nor, for example, Form S–4, commonly used to register business combination transactions, expressly requires filing fee calculation-specific disclosure beyond the title of each class of securities to be registered, the amount to be registered, the proposed maximum offering price per unit, and the amount of the filing fee.

[31] For Rule 424, however, the Commission proposed to permit this filing fee-related information to appear together anywhere within a filing made pursuant to the rule.

[32] Rule 424 specifies when an issuer must file a form of prospectus in connection with a securities offering. Rule 424(g) states that when that filing requirement applies and the form of prospectus operates to reflect the payment of filing fees for an offering under Rule 456(b) [17 CFR 230.456(b)] of the Securities Act, the form of prospectus must include on its cover page the calculation of filing fee table reflecting the payment of those fees. Rule 456(b), in turn, provides that under specified conditions a well-known seasoned issuer that registers securities on an automatic shelf

Continued

fee-related information in specified forms of prospectus; [33]

- Revising the instructions to Forms S–3 [34] and F–3 [35] to provide that:
  - Information specified by the proposed term ''General Interactive Data File,'' described below, must appear in a prospectus filed under Rule 424(b) or post-effective amendment rather than a periodic report that is incorporated by reference into the registration statement to avoid extending the filing fee structured information requirements to periodic and current reports; [36]
  - Each post-effective amendment or final prospectus filed pursuant to Rule 424(b) to provide required information about a specific transaction must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate that it is a final prospectus for the related offering to assist in calculation of the amount of securities sold;
- Revising the instructions to Forms S–4 [37] and F–4 [38] to provide that:
  - Each post-effective amendment or, if permitted, final prospectus supplement filed under Rule 424(b) to provide required information about a specific transaction and particular company being acquired, must include the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates;
  - Each such prospectus must indicate that it is a final prospectus for the related offering to assist in calculation of the amount of securities sold; and
- Revising the proposed instructions related to reliance on Securities Act Rule 415(a)(6),[39] § 230.429 (Securities Act Rule 429),[40] and Securities Act Rules 457(b) [41] and 457(p),[42] and Exchange Act Rule 0–11(a)(2) [43] to require disclosure related to, among other things, prior filing identification, unsold securities, maximum aggregate offering amount, and previously paid filing fees, as applicable. The Commission believed that this information, which was also proposed to be subject to structuring requirements, would enable filers and the Commission staff to better track permitted fee offsets and the amount of securities sold for which filing fees have been paid.[44]

b. Comments on the Proposed Amendments

A commenter stated that centralizing the filing fee information would reduce the number of places the Commission would need to look for the information and as a result, facilitate automated review and, because the filer would need to enter the information only once, likely improve the accuracy of the information and its preparation speed.[45] The commenter also stated that automated review could improve the validity and timeliness of analysis. No commenters opposed the proposed amendments regarding the content and location of fee information.

c. Final Amendments

i. Summary of Amendments

We are adopting the amendments substantially as proposed with modifications to enhance their operation. Consistent with the Commission's prior view, we believe that requiring certain fee-bearing filings to include all of the information necessary to calculate the filing fee, will expedite staff review of filing fee calculations, provide more certainty to filers that the proper filing fee has been paid and reduce burdens on filers that otherwise would need to respond to staff inquiries. After further consideration, however, we believe that it would be better to require the filing fee-related information in a separate filing fee exhibit rather than on the cover page.[46] We believe this approach will streamline presentation of the information and potentially facilitate future changes in structuring technology that may be applied to it.[47]

registration statement may defer a filing fee payment until it is required to file the related prospectus supplement under Rule 424(b).

[33] Proposed instructions to each filing fee table required by Rule 424(g) could have required the filer to disclose explanatory information to accompany the filing fee table, such as cash paid or received by a registrant in connection with a business combination transaction that is relevant to filing fee calculation. As a result, the Commission proposed to revise Rule 424(g) to require the filing to include the filing fee table and information required by the form instructions to the filing fee table, and to require all of this information in a structured format. This proposed requirement could have caused more information to be required on the prospectus cover page and, as a result, displace information that is more appropriate for the cover page. For this reason, the Commission also proposed to revise Rule 424(g) to permit the filing fee-related information to appear anywhere within the prospectus as long as it appears together.

[34] General Instruction II.F of Form S–3.

[35] General Instruction II.G of Form F–3.

[36] An issuer otherwise could continue to include transaction-specific information in a periodic or current report to the same extent it can do so under current provisions.

[37] General Instruction H of Form S–4. We also proposed to revise the first sentence of General Instruction H to conform it to the second sentence and General Instruction F of Form F–4 by replacing the word ''or'' with the word ''and'' where the sentence currently refers to ''required information about the type of contemplated transaction or the company to be acquired.''

[38] General Instruction F of Form F–4.

[39] Rule 415(a)(6) provides, in general, that under specified circumstances an issuer may include on a new registration statement (*i.e.,* carry forward) unsold securities covered by its earlier registration statement and the offering of securities on the earlier registration statement will be deemed terminated as of the effectiveness of the new registration statement. Any filing fee paid in connection with such unsold securities will continue to be applied to such unsold securities on the new registration statement.

[40] Rule 429 provides that where a registrant has filed two or more registration statements, it may file a single prospectus in its latest registration statement to satisfy applicable requirements for that offering and any other offering(s) registered on the earlier registration statement(s). Rule 429 also provides that where a registrant does so, the registration statement containing the combined prospectus shall act, upon effectiveness, as a post-effective amendment to any earlier registration statement whose prospectus has been combined in the latest registration statement. Finally, Rule 429 states that the registrant must identify any earlier registration statement to which the combined prospectus relates by setting forth the Commission file number at the bottom of the facing page of the latest registration statement.

[41] Rule 457(b) relates to crediting filing fees paid under one filing fee provision against those due under another filing fee provision for the same transaction.

[42] Rule 457(p) provides that where all or some of the securities offered under a registration statement remain unsold after the offering's completion or termination, or withdrawal of the registration statement, the aggregate total dollar amount of the filing fee associated with those unsold securities may be offset against the total filing fee due for a later registration statement or registration statements subject to specified conditions.

[43] Rule 0–11(a)(2) also relates to crediting filing fees paid under one filing fee provision against those due under another filing fee provision for the same transaction.

[44] Relatedly, Rule 457(p) requires that a filer claiming an offset from a previous registration statement add a note to the later registration statement's filing fee table stating the dollar amount of the filing fee previously paid that is offset, the file number of the earlier registration statement from which the filing fee is offset, and the name of the registrant appearing on, and the initial filing date of, the earlier registration statement. To help assure that the amount of offset the filer seeks to apply is available from the earlier registration statement, the Commission proposed that, in addition, the note would have to disclose the amount of unsold securities or unsold aggregate offering amount from the prior registration statement associated with the claimed offset. Finally, the Commission proposed to require the note to state that the registrant has withdrawn the prior registration statement or terminated or completed any offering that included the unsold securities associated with the claimed offset under the earlier registration statement so that it is clear that these conditions have been met.

[45] *See* letter from XBRL US.

[46] Rule 424(g) requires that a prospectus filed under Rule 424 include any filing fee-related information on the cover page. The Commission proposed, however, to amend Rule 424 to permit this filing fee-related information to appear together anywhere within a filing made pursuant to the rule. As further discussed in Section II.A.3, the revision we are adopting to Rule 424(g) to require this filing fee-related information in an exhibit to the prospectus, obviates the need for this proposal.

[47] It may be easier for the Commission to change the structuring technology applicable to a separate exhibit than to a main document to which one or more other technologies may continue to apply because of the greater simplicity of having a single format to consider and address.

Specifically, the final amendments, substantially similar to the proposals except where noted, will make the following changes, as applicable: [48]

- Require filing fee-related information to appear in a filing fee exhibit rather than on the cover page of each of the Affected Securities Act and Exchange Act Forms and Schedules, Rule 13e–1, Forms SF–1 and SF–3,[49] and Forms N–2 and N–14.
- To facilitate filing fee determination, information presentation, capacity tracking, and structuring and EDGAR validation, add columns to the basic filing fee table for registration forms [50] to indicate: The type of security being newly registered or carried forward; [51] the registration form type, file number, and initial effective date of one or more previously filed registration statements associated with any unsold securities that the registrant is carrying forward; fees paid in connection with amendments; and entries for total offering amounts, the total amount of fee offsets and the total fee due net of fee offsets and any previously paid amounts;
- To require most of the filing fee calculation information to be presented in tabular rather than narrative format, add new tables [52] to provide disclosure regarding any fee offsets claimed by the registrant that are derived under Rule 457(b) and (p) and Rule 0–11(a)(2) and disclosure related to any reliance on Rule 429 to file a single prospectus that relates to two or more registration statements;
- Add a ''fee rate'' column to the filing fee table of the Affected Securities Act and Exchange Act Forms and Schedules, as well as to Forms SF–1 and SF–3 and Forms N–2 and N–14;
- Revise filing fee tables in Schedules 13E–3 and TO and add filing fee tables to Schedules 13E–4F, 14A, 14C, and 14D–1F to require filers to present basic filing fee calculation information in a table, and, in a change from the proposal, information about any claimed offsets in a separate table; [53]
- Add or clarify instructions regarding filing fee table presentation, calculations and related disclosure content and presentation [54] in general [55] and, in particular, associated with Rule 415(a)(6), Rule 429, Rule 457(a), (b), (f),[56] (h), (o), (p),[57] and (u),[58] Rule 0–11(a)(2), and transaction valuation, as applicable, in regard to the Affected Securities Act and Exchange Act Forms and Schedules as well as Forms SF–1, SF–3,[59] N–2 and N–14,[60] or involving

[48] Some of the final amendments will not affect all of the fee-bearing filings within the scope of this release. For example, final amendments related to Rule 457(f) will not apply to Form S–8, which is used for employee benefit plan-related securities offerings, or to Form N–2, because these forms do not involve business combination or other transactions, which Rule 457(f) addresses. Although fee-bearing filings under the Securities Act and Exchange Act are used for different types of offerings and transactions, under the final amendments, consistent with the proposals, they will all contain some of the same or highly similar filing fee table categories to facilitate comparisons and structuring. In a change from the proposal, the affected fee-bearing documents under the Exchange Act will not expressly require tabular disclosure of the title of each class of securities to which the related transaction applies. Additional tailored disclosure will still be required as applicable. Likewise, amended Forms N–2 and N–14 will also contain, with some modifications, the same filing fee-related content requirements we are adopting for the Affected Securities Act and Exchange Act Forms and Schedules.

[49] For the reasons discussed in Section II.A.5 regarding the scope of the amendments, in a change from the proposal, we are revising the filing fee-related information content and location requirements of Forms SF–1 and SF–3 similar to the way we are revising the Affected Securities Act and Exchange Act Forms and Schedules, but not subjecting the filing fee-related information to structuring requirements except at the filer's option.

[50] *See* in the relevant forms, Table 1: Newly Registered and Carry Forward Securities. These columns and related instructions are being added in a change from the proposal further discussed below.

[51] The instructions to the filing fee tables specify the following security types: Asset-backed securities, debt, debt convertible into equity, equity, exchange-traded vehicle securities; face amount certificates; limited partnership interests, mortgage-backed securities, non-convertible debt, other, or unallocated (universal) shelf.

[52] *See* in the relevant forms, Table 2: Fee Offset Claims and Sources, and Table 3: Combined Prospectuses. The tables are being added in a change from the proposal further discussed below.

[53] As amended, the filing fee tables for Schedules 13E–3, 13E–4F, TO, and 14D–1F will have the column headings ''Transaction Valuation,'' ''Fee rate,'' and ''Amount of filing fee'' and columns to differentiate between previously paid fees and fees being paid in connection with the current filing. Also as amended, the filing fee tables for Schedules 14A and 14C will have similar column headings.

[54] All of the Affected Securities Act and Exchange Act Forms and Schedules and Forms N–2 and N–14, as amended, will include a new filing fee table instruction that will require all filing fee-related disclosure required by the filing fee table instructions, but not included in the filing fee table, to immediately follow the filing fee table to which it corresponds. *See, e.g.,* Instruction 1.D to the Calculation of Filing Fee Tables in Item 16(c) of Form S–1.

[55] For example, the final amendments will add two instructions to the Securities Act forms and Forms N–2 and N–14 subject to the location and content amendments, as applicable, that address pre-effective amendments. In a change from the proposal, one will provide that when a registrant increases the amount of securities of any class to be registered, it must continue to disclose in Table 1 the information it previously disclosed in a separate category to effectively distinguish the newly added securities. *See, e.g.,* Instruction 2.A.i to the Calculation of Filing Fee Tables in Item 16(c) of Form S–1 and Instruction 2.A.i to Item 25.2.s of Form N–2. As proposed, the registrant would have been required to disclose some of that information in narrative format. As further discussed in Section II.C, the other will provide that when a registrant files a pre-effective amendment to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, it may, unless it previously relied on Rule 457(o) to calculate the fee, reflect any such increase and decrease in the filing fee table, recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. *See, e.g.,* Instruction 2.A.iv to the Calculation of Filing Fee Tables in Item 16(c) of Form S–1 and Instruction 2.A.iv of Item 25.2.s of Form N–2.

[56] We are adopting a modified version of proposed Instruction 1 to the Instructions to the ''Calculation of Registration Fee'' Table and Related Disclosure of Forms S–1, S–4, S–11, F–1, F–4, and N–14 to conform it more closely to Rule 457(f). *See, e.g.,* Instruction 2.A.ii.b to the Calculation of Filing Fee Tables in Item 16(c) of Form S–1.

[57] In a change from the proposed filing fee table instructions relating to Rule 457(p), we refer to the filing fee previously paid for unsold securities under an earlier filed, rather than effective, registration statement to be consistent with the term used in the rule.

[58] We are adopting modified versions of the proposals related to each of Forms S–1, S–3, F–1 and F–3 to add a new instruction regarding filing fee-related disclosure in connection with offerings of an indeterminate amount of exchange-traded vehicle securities, as that term is defined in Securities Act Rule 405 (17 CFR 230.405), and net deferred filing fee payment. In the Closed-End Fund Offering Reform Adopting Release, the Commission adopted amendments to, among other things, permit issuers to elect under Securities Act Rule 456(d) to register an offering of an indeterminate amount of exchange-traded vehicle securities and pay registration fees for the offering on an annual net basis no later than 90 days after the end of the fiscal year. Concurrently, the Commission adopted Securities Act Rule 457(u), which sets forth the calculation method for paying registration fees in this manner. At the same time, the Commission adopted amendments to the fee table notes to Forms S–1, S–3, F–1, and F–3 to require specified disclosure for an offering made in reliance on Rules 456(d) and 457(u). The additions of Rules 456(d) and 457(u) and the related form text became effective on August 1, 2021. We are including this new form text by adding Instruction 2.A.ii.d to the Calculation of Filing Fee Tables in Item 16(c) of Form S–1, Item 16(b) of Form S–3, Item 8(c) of Form F–1, and Item 9(b) of Form F–3.

[59] Compared to the other fee-bearing documents providing for Rule 457(p)-based filing fee offset claims, Forms SF–1 and SF–3 contemplate such claims by a broader range of registrants that were not the registrant under the earlier registration statement. New Note 2 to Instructions 3.C.i to the Calculation of Filing Fee Tables in Item 14(b) of Forms SF–1 and SF–3, respectively, also provide for a claim by an ''other registrant eligible to claim a filing fee offset.'' The broader language reflects the Commission's previous statement that ''ABS issuers opting to pay the required registration fees with each takedown could rely upon Rule 457(p) to apply a portion of the fee associated with the unsold securities under a previously-filed registration statement as an offset against the filing fee due at the time of the preliminary prospectus filing by the same depositor or affiliates of the depositor across asset classes.'' *See* Asset-Backed Securities (''ABS'') Release, *infra* note 90.

[60] All of the Affected Securities Act and Exchange Act Forms and Schedules other than Form F–10, as well as Forms N–2 and N–14, currently are subject to Rule 457, in the case of forms under the Securities Act, or Rule 0–11, in the case of schedules under the Exchange Act. General Instruction II.B of Form F–10, provides, however, that the rules comprising Regulation C under the

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business combination or employee benefit plan filing fee calculations.

• Add filing fee tables and calculation disclosure requirements to Exchange Act Rule 13e–1;[61]

• Revise Rule 424(g) so that the form of prospectus that reflects the amount of a pay-as-you-go registration fee under Rule 456(b)[62] or, in relation to Form SF–3, Rule 456(c),[63] also includes all filing fee information needed for filing fee calculation and not just the currently required registration fee table, and to require all of this information to be located in a filing fee exhibit rather than, as proposed, on the prospectus cover page or anywhere else in the filing so long as it is kept together;[64]

• Revise the General Instructions to Forms S–3,[65] F–3,[66] and SF–3[67] to provide that:

○ Information specified by each form's filing fee exhibit requirements or Rule 424(g) related to a specific transaction must appear in a filing fee exhibit to a post-effective amendment or prospectus filed under Rule 424(b) or (h),[68] as applicable, rather than a periodic report that is incorporated by reference into the registration statement; and

○ Each post-effective amendment or final prospectus filed pursuant to Rule 424(b) to provide required information about a specific transaction must include in a filing fee exhibit the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate in the exhibit that it is a final prospectus for the related offering to assist in calculation of the amount of securities being sold;

• Revise the General Instructions to Form N–2[69] to provide that:

○ Funds that register securities under the Securities Act on Form N–2 must include a filing fee exhibit, except interval funds, which are required to pay registration fees on Form 24F–2;[70]

○ Where securities are being registered pursuant to General Instruction A.2, information specified by Item 25.2.s of Form N–2 or Rule 424(g) related to a specific transaction must appear in a filing fee exhibit to a post-effective amendment or prospectus filed under Rule 424(b);[71] and

○ Each post-effective amendment or final prospectus filed pursuant to Rule 424(b) to provide required information about a specific transaction must include in a filing fee exhibit the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates, and each such prospectus must indicate in the exhibit that it is a final prospectus for the related offering;

• Revise the General Instruction to Form N–14[72] to provide that funds must include a filing fee exhibit, except funds that pay registration fees on an annual net basis pursuant to Rule 24f–2 under the Investment Company Act, which are required to pay registration fees on Form 24F–2; and

• Revise the General Instructions to Forms S–4[73] and F–4[74] to provide that each post-effective amendment or, if permitted, final prospectus supplement filed under Rule 424(b) to provide required information about a specific transaction and particular company being acquired, must include in a filing fee exhibit the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate in a filing fee exhibit that it is a final prospectus for the related offering.

ii. Filing Fee Exhibit Requirements

As noted above, in a change from the proposal, we are moving the filing fee-related information from a filing's cover page to an exhibit to the filing because we believe this approach will streamline presentation of the information and potentially facilitate future changes in structuring technology applied to it.[75]

Securities Act, including Rule 457, do not apply to filings on the form unless expressly referenced. Form F–10 does not expressly reference Rule 457. Instead, it presents its own filing fee calculation provisions in General Instructions II.G—II.I. These instructions require payment at the same rate applicable under Rule 457 and set forth how to calculate the filing fee in connection with an exchange offer or business combination. From time to time, filings on Form F–10 have raised filing fee issues that are not addressed by these instructions. In those cases, the staff typically has resolved these issues by applying principles derived from otherwise applicable provisions of Rule 457. Consistent with that historic approach, the final amendments will revise General Instruction II.G to make all but paragraph (f) of Rule 457 expressly applicable to filings on Form F–10. Consistent with the changes being made to the other Securities Act forms that require specified information underlying a Rule 457(f) fee calculation, the Commission is adding Instructions 2.A.ii.b and c to the Calculation of Filing Fee Tables in paragraph (107) to Part II of Form F–10 to require analogous information underlying a filing fee calculation under General Instructions II.H and II.I, respectively. In a change from the proposal, to further conform new paragraphs 2.A.ii.b and c to the analogous provisions of the other Securities Act forms and clarify the information required, we have added to both instructions the requirement that the valuation explanation include the value per share of the securities that may be received by the registrant or cancelled upon the issuance of securities registered on the form or the value per share of the equity securities of the predecessor companies held by U.S. residents being offered the registrant's securities, as applicable. In addition, the final amendments more closely conform the language of new paragraphs 2.A.ii.b and c to General Instructions II.H and II.I, respectively.

[61] As adopted, the filing fee tables and related instructions to be added to Rule 13e–1 will be substantially similar to the filing fee tables and related instructions that will be present in Schedules 13E–3, 13E–4F, TO, and 14D–1F as amended.

[62] Rule 456(b) permits a well-known seasoned issuer that registers securities offerings on an automatic shelf registration statement, or registers additional securities or classes of securities thereon, to defer payment of all or any part of the registration fee to the Commission if the registrant satisfies the conditions specified in Rule 456(b)(1)(i) and (ii).

[63] Rule 456(c) permits an ABS issuer that registers ABS on Form SF–3 to defer payment of all or any part of the registration fee to the Commission if the registrant satisfies the conditions specified in Rule 456(c)(1)(i) and (ii). We are adopting a modified version of the proposed revision to Rule 424(g) by adding a reference to Rule 456(c) consistent with the modification of Form SF–3 to conform its content and presentation requirements to those of similar forms this adopting release addresses.

[64] We also are revising Rule 456(b) and (c) to conform them to Rule 424(g) as amended. Rule 456(b)(1)(ii) provides that in connection with a deferred filing fee payment, a filer must place an updated filing fee table in a post-effective amendment or on the cover page of a prospectus filed under Rule 424(b). Similarly, Rule 456(c)(1)(ii) provides that in connection with a deferred filing fee payment, a filer must place an updated filing fee table on the cover page of a prospectus filed under 424(h). As revised, Rule 456(b)(1)(ii) and (c)(1)(ii) will instead require a filer placing the updated filing fee table in a prospectus to do so in the manner Rule 424(g) specifies.

[65] General Instruction II.F of Form S–3.

[66] General Instruction II.G of Form F–3.

[67] General Instruction II.D of Form SF–3.

[68] A filing fee exhibit to a prospectus will be a part of the prospectus for liability and other purposes just as deferred fee filing information is today when provided pursuant to Rule 456(b) or (c). The filing fee exhibit to a prospectus, however, will be required to be submitted as an attachment for EDGAR filing purposes as will be further specified in the EDGAR Filer Manual.

[69] General Instruction C of Form N–2.

[70] General Instruction C.1 of Form N–2.

[71] General Instruction C.2 of Form N–2.

[72] General Instruction B of Form N–14.

[73] General Instruction H of Form S–4. We also are revising the first sentence of General Instruction H to conform it to the second sentence and General Instruction F of Form F–4 by replacing the word ''or'' with the word ''and'' where the sentence currently refers to ''required information about the type of contemplated transaction or the company to be acquired.''

[74] General Instruction F of Form F–4.

[75] We have made corresponding revisions to several rule provisions that were premised in the proposing release on filing fee-related information appearing on the cover page of a registration statement. Securities Act Rule 415(a)(6) provides that, when a filer carries forward securities to a new registration statement, it must identify on the bottom of the cover page of the new registration statement or the latest amendment to it, the amount of securities carried forward and any filing fee paid in connection with those securities. We are revising Rule 415(a)(6) to provide that such information must appear on the cover unless expressly required elsewhere in the filing. Securities Act Rule 473(a), in general, specifies a form of amendment that delays the effectiveness of a registration statement until the registrant files a specified further

For the Securities Act forms that refer to the exhibit requirements in Item 601 of Regulation S–K, the filing fee-related information exhibit requirement will be established by a combination of a new Item 601(b)(107) of Regulation S–K and the following new provisions: Item 16(c) of Form S–1, Item 16(b) of Form S–3, Item 8(b) of Form S–8, Item 36(c) of Form S–11, Item 21(d) of Form S–4, Item 8.c of Form F–1, Item 9(b) of Form F–3, Item 21(d) of Form F–4, Item 14(b) of Form SF–1, and Item 14(b) of Form SF–3. Since Form F–10 does not refer to Item 601, the filing fee-related information exhibit requirement will appear in new paragraph (107) of Part II of that form.[76]

The Exchange Act schedules and Rule 13e–1 will require the filing fee exhibit through the following new provisions: Item 16(b) of Schedule 13E–3, paragraph (4) of Part II of Schedule 13E–4F, Item 25(b) of Schedule 14A, Item 12(b) of Schedule TO, paragraph (4) of Part II of Schedule 14D–1F and Rule 13e–1(a)(7).[77] Because the Schedule 14A filing fee information requirement will appear in a new item of that schedule and Item 1 of Schedule 14C generally requires compliance with relevant items of Schedule 14A, we are revising Schedule 14C to replace the current detailed filing fee-related information requirements with a cross-reference to Item 25(b) of Schedule 14A.

iii. Changes to Forms N–2 and N–14

In a change from the proposal, we are modifying certain aspects of the content and location requirements for Forms N–2 and N–14. We solicited comment on whether the proposed requirements were sufficient to centralize relevant information, or whether there were other ways we could facilitate the fee process for filers. We also asked whether we should apply the proposed filing fee content and structuring requirements to the proposed filing types, or whether the scope should include more or less types of filings. In response, we received a comment stating that we should structure all fee-bearing documents' fee information to enable consistency of preparation and usage.[78]

Consistent with our overarching goal of enabling more efficient automated access to, and processing of, information relevant to fee calculation, in a change from the proposal we are adopting amendments to Forms N–2 and N–14 that generally mirror, as applicable, the centralized filing fee table presentation, calculation and related disclosure requirements that were proposed for the Affected Securities Act and Exchange Act Forms and Schedules. We believe this approach will promote consistency of presentation and usage of affected fee-bearing forms, and provide greater clarity to fund registrants regarding how to comply with the filing fee-related content requirements without adding new substantive requirements.

In another change from the proposal, amended Forms N–12 and N–14 also will require the filing fee exhibit, which will be implemented through revisions to the General Instructions for Registration Fees in both of these forms,[79] and the addition of the following provisions: Item 25.2.s of Form N–2, and paragraph 18 of Item 16 of Form N–14.

Not all fund registrants will be required to provide the new filing fee exhibits. For example, certain investment companies, including mutual funds, exchange-traded funds, unit investment trusts—and most recently, interval funds— are deemed to have registered an indefinite number of securities under Section 24(f) of the Investment Company Act and required by Rule 24f–2 to pay registration fees on an annual net basis using Form 24F–2.[80] Forms N–2 and N–14 currently do not require such registrants to provide Calculation of Filing Fee tables in their registration statements.[81] Consistent with this approach, registrants that pay registration fees using Form 24F–2 will not be required to provide the filing fee exhibit for Forms N–2 or N–14. While SBICs may register securities under the Securities Act on Form N–14, based on their filing history, we do not expect to see many, if any, such filings.[82] Accordingly, we believe that registered closed-end funds (that are not interval funds) and BDCs are the only types of funds likely to be subject to the Form N–2 and N–14 filing fee exhibit requirements at this time.

iv. Other Changes to Rules and Instructions

A new instruction relating to Rule 429 reliance will require an issuer relying on that rule to disclose in a combined prospectus table the file number(s) of the earlier effective registration statement(s), the form type(s) and initial effective date(s), the amount or maximum aggregate offering price of unsold securities registered on the earlier registration statement(s) that may be offered and sold using the combined prospectus and the securities' type and class title.[83] We believe that requiring

amendment or the Commission declares the registration statement effective. Rule 473(c) requires a filer that includes such a delaying amendment to place it on the cover of the registration statement following the fee-related information. As a result of moving the filing fee-related information from the cover page to an exhibit of most fee-bearing Securities Act forms, we are revising Rule 473(c) to permit the delaying amendment to appear anywhere on the cover page. In addition, we are adopting revisions to fee-bearing form instructions that permit filers registering additional securities under § 230.462(b) (Securities Act Rule 462(b)) to file an abbreviated format registration statement that includes a cover page and certain other specified information. We are revising these instructions to include filing-fee related information. *See* General Instruction V of Form S–1, General Instruction IV.A of Form S–3, General Instruction G of Form S–11, General Instruction K of Form S–4, General Instruction V of Form F–1, General Instruction IV.A of Form F–3, General Instruction H of Form F–4, and General Instruction III of Forms SF–1 and SF–3.

[76] As further discussed below, the Commission proposed to add a row (107) to the exhibit table in Item 601(a) of Regulation S–K and a paragraph (107) to Item 601(b) to require Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, and F–4 to include a General Interactive Data File and, as a result, require each form to include its filing fee-related information in structured format. Similarly, the Commission proposed to add a new paragraph (107) to Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 to require a General Interactive Data File. In changes from these proposals discussed below, we are directly imposing the structuring requirement on these forms' filing fee exhibits' contents, other than Form F–10's, through Item 601(b)(107) and on Form F–10's through paragraph (107) to Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10. This change removes the reason for the proposal to require structuring by reference to the new term ''General Interactive Data File''. Consequently, we are not revising Rule 11 of Regulation S–T to add that term. *See* Section II.A.4 regarding adoption of the structuring requirement.

[77] These provisions also will directly impose a structuring requirement on filing fee exhibits' contents rather than, as proposed, require filing fee-related information structuring by reference to the term ''General Interactive Data File.'' *See* Section II.A.4.

[78] *See* letter from XBRL US.

[79] General Instruction C of Form N–2; General Instruction B of Form N–14.

[80] The Commission recently expanded the group of issuers subject to filing on Form 24F–2 to include interval funds. *See* Closed-End Fund Offering Reform Adopting Release, *supra* note 2.

[81] Unlike Form N–2, Form N–14 currently requires funds that pay registration fees on Form 24F–2 to ''provide the Title of Securities Being Registered and state that no filing fee is due because of reliance on Section 24(f).'' Because the EDGAR Filer Manual already requires funds to disclose their status as Form 24F–2 filers in the header for Form N–2 and Form N–14, and to harmonize the forms, we are eliminating this instruction from Form N–14.

[82] Based on staff review of Commission filings, a SBIC has not filed on Form N–14 for at least 20 years.

[83] Because funds can also rely on Rule 429, in a change from the proposal we are amending Forms N–2 and N–14 to mirror the parallel instruction we are adopting for the Affected Securities Act and Exchange Act Forms and Schedules. *See* Instruction 4 to Item 25.2.s of Form N–2; Instruction 4 to paragraph 18 of Item 16 of Form N–14. In a related change, we are also making a technical correction to General Instruction B of Form N–14 to clarify that all form registrants, not just open-end management companies, as currently stated, may rely on Rule 429. In another change from the

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this information, which will also be subject to structuring requirements, will enable filers and the Commission staff to better track the amount of securities sold for which filing fees have been paid.

For the same reason, we are amending the Affected Securities Act and Exchange Act Forms and Schedules for which Rule 415(a)(6) is potentially available, as proposed, as well as Forms SF–3 and N–2, to require that a filer relying on that rule disclose the number of securities, or, if the related filing fee was calculated in reliance on Rule 457(o), the maximum aggregate offering amount; the file number of the earlier registration statement; the initial effective date of the earlier registration statement; and the filing fee previously paid in connection with the unsold securities being carried forward.[84]

Also for the same reason, the amendments will require those filing Affected Securities Act and Exchange Act Forms and Schedules, statements under Rule 13e–1, and Forms SF–1, SF–3, N–2 and N–14 that rely on Rule 457(b) or Rule 0–11(a)(2) to disclose the dollar amount of the filing fee to be offset, the type of filing or form type, file number, and initial filing date of the earlier registration statement or Exchange Act filing from which the filing fee offset is claimed.[85] If the filer is claiming an offset from an earlier Securities Act registration statement, the amendments also will require the filer to provide a detailed explanation regarding the claimed offset.[86] In a change from the proposal, this fee offset claim information will be required in Table 2, which also will require information about the original sources (''fee offset sources'') to which the fee offsets claimed can be traced.[87] The fee offset source requirements in Table 2 for Rule 457(b) and 0–11(a) fee offset claims are registrant or filer name, form or filing type, file number, filing date and fee paid with fee offset source.[88]

Rule 457(p) generally requires that a filer claiming an offset from a previous registration statement add a note to the later registration statement's filing fee table stating the dollar amount of the filing fee offset claim against the currently due filing fee, the file number of the earlier registration statement from which the filing fee offset is claimed, and the name of the registrant appearing on, and the initial filing date of, the earlier registration statement. To help assure that the amount a filer claims as an offset from a previous registration statement is available, we are amending Rule 457(p) to require disclosure of the amount of unsold securities or unsold aggregate offering amount from the prior registration statement associated with the claimed offset, as proposed.[89] In addition, consistent with the proposal, the amendments will require the note to state that the registrant has withdrawn the prior registration statement or terminated or completed any offering that included the unsold securities associated with the claimed offset under the earlier registration statement so that it is clear that these conditions have been met.[90] As proposed, the parallel disclosure requirement will appear in the filing fee table instructions of the Affected Securities Act and Exchange Act Forms and Schedules, as well as Forms SF–1, SF–3, N–2 and N–14,[91] and the resulting disclosure will have to be presented in the Inline XBRL structured format as applicable.[92] In a change from the proposal further discussed below, the filing fee table instructions of these forms and schedules will, however, require in tabular format and a note to a new fee offset claim table the resulting disclosure and all disclosure currently required by Rule 457(p).[93] For this reason, we are also amending Rule 457(p) to provide that the information it requires in connection with a fee offset claim must be provided in a note as currently required unless expressly required in another part of the registration statement.

General Instructions II.F, II.G, and II.D of Forms S–3, F–3, and SF–3, respectively, currently require that, when information is omitted from certain shelf registration statements at the time of initial effectiveness, the issuer must provide information about a specific transaction in a prospectus filed under Rule 424(b) or (h), post-effective amendment or periodic or current report incorporated by reference into the registration statement, as applicable. Registered closed-end funds and BDCs that file a short-form shelf registration statement on Form N–2 are subject to the same requirement pursuant to General Instruction A.2 of Form N–2. In a change from the proposal, the filing fee exhibit requirements that pertain to the forms will specify the filing fee-related information that a filer must

proposal, we are adding the requirements for form type, initial effective date and the securities type and class title.

[84] Rule 415(a)(6) currently requires that a filer using the rule identify on the bottom of the facing page of the later registration statement the amount of unsold securities being included and any filing fee paid in connection with those securities. We are amending the current reference to information that must appear on the cover page, as discussed above. *See supra* note 75. Although an instruction referencing Rule 415(a)(6) was not proposed with respect to Form N–2, certain Form N–2 registrants can rely on Rule 415(a)(6) so we are adding an instruction to the Form N–2 filing fee exhibit that parallels the new instruction referencing Rule 415(a)(6) in similar forms. *See* Instruction 2.B to Item 25.2.s of Form N–2. In a modification to the proposal to better enable tracking, the filer also will be required to disclose the form type of the earlier registration statement and the securities' type and class title.

[85] We are adopting these amendments largely as proposed, except with respect to Forms SF–1, SF–3, N–2 and N–14, for which parallel modifications were not proposed but we are adopting to conform these forms to similar forms being amended. *See, e.g.,* Instruction 3 to Item 16 of Form S–1; Instruction 3 to Item 25.2.s of Form N–2.

[86] This disclosure will be required when a filer claims an offset from a Securities Act registration statement under Rule 457(b) or Rule 0–11(a)(2) because the transaction linkage between the document being filed and the Securities Act registration statement may be less readily apparent than when an offset is claimed from a transactional Exchange Act filing.

[87] For example, if a filer on Schedule TO claims an offset under Rule 0–11(a)(2) from a Form S–4 it filed, and the filer did not make a contemporaneous fee payment when it filed the Form S–4 because it claimed a fee offset under Rule 457(p) from a Form S–3 it filed that went effective as initially filed and with which it made a contemporaneous payment, the filer would cite to the Form S–3 filing as the fee offset source. More detailed discussion and examples of fee offset source identification will be located in the affected fee-bearing forms and schedules. *See, e.g.,* Instruction 3 to the Calculation of Filing Fee Tables in Item 16(c) of Form S–1.

[88] Fee offset source information currently is required in a header when a filer claims a fee offset. When a filer claims a fee offset under Rule 457(b) or (p) or Rule 0–11(a)(2), it is required to provide in the header the following information about the fee offset source: The Central Index Key (''CIK'') of the filer, form type, file number, filing date, and amount of fee contemporaneously paid.

[89] Final Rule 457(p)(2).

[90] Final Rule 457(p)(5). The adopted changes will not affect the Commission's position that asset-backed securities issuers could apply unused filing fees in connection with a preliminary prospectus filing toward a future takedown off the same registration statement. *See Asset-Backed Securities Disclosure and Registration,* Release No. 33–9638 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)] as corrected by Release No. 33–9638A (Nov. 3, 2014) [79 FR 66607 (Nov. 10, 2014)].

[91] Although though not specifically proposed with respect to Forms N–2 and N–14, we are amending these forms to include the new instruction for issuers that seek to rely on Rule 457(p) for conformance with similar forms being amended. *See* Instruction 3.C to Item 25.2.s of Form N–2; Instruction 3.C to paragraph 18 of Item 16 of Form N–14.

[92] As previously noted, we are not extending the structuring requirements to Forms SF–1 and SF–3 but will permit filers on these forms to structure their filing fee-related information. *See* Item 601(b)(107) of Regulation S–K.

[93] In a further change from the proposal, the affected forms and schedules will require in tabular format slightly more information about Rule 457(p) fee offset claims and the same fee offset source information that will be required in connection with a Rule 457(b) or 0–11(a)(2) fee offset claim as described above. The tables will also require the form or filing type of the earlier registration statement from which the fee offset is claimed and the type and title of the unsold securities or unsold aggregate offering amount associated with the fee offset claimed. We believe this additional information will help validate the fee offset claims.

structure.[94] Similarly, the amendments revise Forms S–3 and F–3 to require that in relation to a specific transaction, an issuer include any information specified by (i) Item 16(b) of Form S–3 or Rule 424(g); or (ii) Item 9(b) of Form F–3 or Rule 424(g),[95] respectively, in a prospectus filed under Rule 424(b), or post-effective amendment, as applicable, to avoid extending the filing fee structured information requirements to periodic and current reports,[96] as proposed. For the same reason, we are further modifying the proposals by adopting similar amendments to Forms SF–3 and N–2.[97] In another change from the proposal, for the reasons stated at the outset of this section, the amendments also specify that the information must be in a filing fee exhibit.

Consistent with the proposal, the amendments revise the same instructions to Form S–3 and F–3 to require each post-effective amendment or final prospectus that is filed pursuant to Rule 424(b) in order to provide required information about a specific transaction to include in a filing fee exhibit the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates, and to require each such prospectus to indicate that it is a final prospectus for the related offering.[98] To ensure consistency, we are adopting similar amendments to Forms SF–3 [99] and N–2.[100] We believe that requiring this information, which will also be subject to the new structuring requirements, except as to Form SF–3,[101] will enable issuers and the Commission to better track the amount of securities sold under a registration statement. Such information will make it easier to determine amounts of unsold securities available to bring forward to a new registration statement under Rule 415(a)(6) and the amount of filing fees available for offsets under Rules 457(p) and 0–11. We also believe requiring registrants to indicate that a prospectus is final in a filing fee exhibit subject to the new structuring requirements will help issuers and the Commission identify the latest date by which filing fees deferred under Rule 456(b) can be paid in compliance with the rule.

General Instructions H and F of Forms S–4 and F–4, respectively, currently require that when securities are offered in connection with a business combination under Rule 415(a)(1)(viii) [102] and information is omitted at the time of initial effectiveness because it is impractical to provide, the issuer must provide information about the specific transaction and company acquired in the prospectus through a post-effective amendment except that, in the case of Form S–4, under specified circumstances, the issuer could instead use a prospectus supplement. We are revising these instructions, consistent with the proposal, to provide that each post-effective amendment or final prospectus supplement filed to provide required information about a specific transaction and particular company being acquired must include in a filing fee exhibit the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates, and each such prospectus must indicate that it is a final prospectus for the related offering.[103] As with the analogous amendments adopted for Forms S–3 and F–3, we believe that requiring this information, which will also be subject to the new structuring requirements, will help issuers and the Commission better track the amount of securities sold under a registration statement.

New instructions to each filing fee table required by Rule 424(g) may require the filer to disclose explanatory information to accompany the filing fee table, such as cash paid or received by a registrant in connection with a business combination transaction that is relevant to filing fee calculation. As a result, we are revising Rule 424(g) to require the filing to include the filing fee table and information required by the form instructions to the filing fee table, and to require all of this information in a structured format, as proposed. We are also revising Rule 424(g) to replace the current requirement to place the filing fee table on the cover page of the prospectus with a requirement to place the filing fee table and related disclosure in a separate filing fee exhibit.[104]

d. Changes to the Proposed Filing Fee Tables and Instructions

We have made several changes to the proposed filing fee tables and instructions to require filers to provide additional detail about their filing fee

[94] As proposed, the information to be structured would have been specified by reference to the term ''General Interactive Data File.''

[95] The references to these items and Rule 424(g) equate to and replace the proposed references to the superseded term ''General Interactive Data File'' and do not otherwise constitute a change from the proposal.

[96] The specified provisions set forth filing fee exhibit content requirements. An issuer otherwise can continue to include transaction-specific information in a periodic or current report to the same extent it can do so under current provisions.

[97] Form N–2 was recently amended to allow eligible registered closed-end funds and BDCs to file a short-form shelf registration statement consistent with the approach available to operating companies that file on Form S–3. *See* Closed-End Fund Offering Reform Adopting Release, *supra* note 2. To avoid having to mirror in Form N–2 all of the language in Form S–3 needed for the preparation and filing of automatic and non-automatic shelf registration statements, Form N–2 provides cross-references to the relevant provisions of Form S–3, including General Instruction II.F, which apply, as applicable, to funds that seek to file a short-form shelf registration statement. *See* Notes to General Instructions A.2 and B of Form N–2. To clarify that Form N–2 filers are subject to the same filing fee-related disclosure obligations we are requiring for issuers that file on Form S–3, we are adding General Instruction C.2.

[98] To expressly require this maximum aggregate amount or maximum aggregate offering price information in the filing fee-related exhibit of a post-effective amendment, in a change from the proposal, we are adding Instruction 1.D to the Calculation of Filing Fee Tables in Item 16(b) of Form S–3 and Item 9(b) of Form F–3. To expressly require this maximum aggregate amount or maximum aggregate offering price and final prospectus information in the filing fee-related exhibit of a final prospectus, we are revising Rule 424(g).

[99] *See* General Instruction II.D of Form SF–3. To expressly require this maximum aggregate amount or maximum aggregate offering price information in the filing fee-related exhibit of a post-effective amendment, we are adding Instruction 1.D to the Calculation of Filing Fee Tables in Item 14(b) of Form SF–3. As noted above, revised Rule 424(g) will expressly require this maximum aggregate amount or maximum aggregate offering price and final prospectus information in the filing fee-related exhibit of a final prospectus.

[100] *See* General Instruction C.2 of Form N–2.

[101] Consequently, even if a filer previously filed and structured filing fee-related information on Form S–3, F–3 or N–2, such as a full filing fee table and explanatory material in an initial filing, pre-effective amendment, or filing under paragraph (b) of Rule 424, as applicable, it still will need to present and structure this maximum aggregate amount or maximum aggregate offering price and final prospectus information, as applicable, in a filing fee-related exhibit of such a post-effective amendment or final prospectus. Similarly, even if a filer previously filed fee-related information on Form SF–3, such as a full filing fee table and explanatory material in an initial filing, pre-effective amendment, or filing under paragraph (h) of Rule 424, it still will need to present this maximum aggregate amount or maximum aggregate offering price and final prospectus information, as applicable, in a filing fee-related exhibit of such a post-effective amendment or final prospectus.

[102] Rule 415(a)(1)(viii) permits an issuer to register a delayed or continuous offering of securities to be issued in connection with business combination transactions.

[103] To expressly require this maximum aggregate amount or maximum aggregate offering price information in the filing fee-related exhibit of a post-effective amendment, we are adding Instruction 1.D to the Calculation of Filing Fee Tables in Item 21(d) of Forms S–4 and F–4 and renumbering the instructions that follow accordingly. To expressly require this maximum aggregate amount or maximum aggregate offering price and final prospectus information in the filing fee-related exhibit of a prospectus, we are revising Rule 424(g).

[104] This amendment to Rule 424(g) obviates the part of the proposal that would have permitted this filing fee-related information to appear together anywhere within the prospectus.

calculations in tabular format. The additional detail generally consists of readily available information that filers already provide under current header requirements and/or information that the filer would already need to determine in order to calculate its fee. Presentation of this information in tabular format will centralize filing fee disclosure and facilitate providing, structuring and analyzing filing fee data.

For example, we proposed to include a single registration fee table in Form S–1 to require disclosure of the following:

- Title of each class of securities to be registered;
- Amount of securities to be registered;
- Proposed maximum offering price per unit;
- Proposed maximum aggregate offering price;
- Fee rate;
- Amount of registration fee; and
- The fee calculation-related rule or rules relied upon by the registrant.

We are adopting an expanded version of that table, now called ''Table 1: Newly Registered and Carry Forward Securities,'' in addition to two other tables, to disclose the additional detail needed to calculate the filing fee in a centralized and more readily identifiable format. Table 1, the first and most basic fee table, continues to include the proposed disclosures about securities that the registrant is newly registering but also calls for similar disclosures regarding securities the registrant is carrying forward from one or more previously filed registration statements. Table 1 requires additional disclosure of the type of security being newly registered and carried forward and the type and class of security being carried forward, to the extent applicable. Table 1 also requires disclosure of the registration form type, file number, and initial effective date of one or more previously filed registration statements associated with any unsold securities that the registrant is carrying forward and the filing fee previously paid in connection with those unsold securities. Finally, Table 1 adds entries for newly registered securities for which fees were previously paid in connection with the initial filing or a pre-effective amendment, total offering amounts, total fees previously paid for newly registered securities, total fee offsets and total fee due net of previously paid fees for newly registered securities and fee offsets.

We are adding a new ''Table 2: Fee Offset Claims and Sources'' to provide more detail regarding any fee offsets claimed by the registrant that are derived under Rule 457(b) and (p) and Rule 0–11(a)(2). We proposed to require most of the information regarding the carry forward securities and fee offsets in narrative format, but upon further consideration, we believe that the disclosure will be easier to provide, structure and analyze if it is instead presented in tabular format. The tabular format should better enable filers to understand what is required and provide it in an organized manner that is more conducive to structuring than narrative disclosure. It should be easier to analyze the resulting information in human-readable form because it will be more organized than in narrative form and generally consistent across fee-bearing documents.

We also are adding a new ''Table 3: Combined Prospectuses'' that a registrant will need to include if relying on Rule 429 to file a single prospectus that relates to two or more registration statements. We proposed to require the Table 3 information in narrative format, but upon further consideration, we believe that tabular disclosure is preferable for Table 3 for the same reasons it will be preferable for Table 1. We have reorganized and added instructions to the tables to assist registrants in completing the fee tables. Forms S–3, S–4, S–8, S–11, F–1, F–3, F–4, F–10, N–2, and N–14 include these same three fee tables.

In a change from the proposal, we also have made some changes to the Exchange Act forms and schedules to provide the disclosure in an improved format. For example, we have added to the basic fee table, Table 1, entries to differentiate between the transaction valuation associated with fees previously paid and fees to be paid in connection with the current filing. Another change is to require Table 1 to include certain totals such as the transaction valuation, fee amounts, fees previously paid, fee offsets claimed and the fee due net of fee offsets and fees paid with an initial filing or previous amendments.[105] We are adding a new Table 2 to provide the same type of detail as the Securities Act forms regarding any fee offsets claimed by the filer that are derived under Rule 0–11(a)(2) in lieu of proposed narrative disclosure requirements.

[105] We proposed that the Exchange Act fee-bearing documents other than Schedules 14A and 14C include the title of each class of securities to which the transaction applies but upon further consideration, we believe that information is not necessary.

4. Structuring of Filing Fee-Related Information

a. Proposed Amendments

To facilitate the filing fee process, we proposed to require structuring of all the filing fee-related information that would be required on the cover page of the Affected Securities Act and Exchange Act Forms and Schedules and statements under Rule 13e–1.[106] We believed that structuring the relevant data would greatly enhance the ability of filers and Commission staff to quickly identify and correct errors, as EDGAR's validation functionality would automatically check the structured filing fee-related information for internal consistency, including prior to submission of a live filing.[107] As proposed, this information would be structured in Inline XBRL for all affected filings. The Proposing Release noted that Inline XBRL would be a particularly useful method of structuring filing fee-related information because: It eliminates the need to tag a copy of the information in a separate document, as under traditional XBRL; [108] Inline XBRL is consistent with the underlying format of all of the fee-bearing forms the Commission proposed to structure; and it enables automated analytical tools to extract the information sought wherever it may be located within a filing.[109]

As proposed, the structured information would include each filing fee table in the Affected Securities Act and Exchange Act Forms and Schedules and statements under Rule 13e–1, together with accompanying explanatory disclosure, as well as other information specified by the proposed Rule 11 definition of ''General Interactive Data File.'' We proposed to define that term as the machine-readable computer code that presents fee-related information required by the applicable rule provision or particular form, statement or schedule, in Inline XBRL in the manner provided by the EDGAR Filer Manual.

As more fully described in the Proposing Release, we proposed to implement the structuring requirement for these forms, schedules and

[106] Filing fee-related information in prospectuses filed under Rule 424 and related to a registration statement under the Securities Act subject to the structuring requirements also would be required to be structured in Inline XBRL.

[107] As detailed below, as implemented, EDGAR will validate certain live filings prior to submission.

[108] Inline XBRL allows filers to embed XBRL data directly into a HyperText Markup Language (''HTML'') document, eliminating the need to tag a copy of the information in a separate XBRL exhibit.

[109] *See* Proposing Release, *supra* note 1, at Section II.A.

statements through a new Item 601(b)(107) of Regulation S–K, the terms of these forms, schedules and statements and a new Rule 424(i). As proposed, the provisions would require these documents to include a General Interactive Data File, and, as a result, require filing of filing fee-related information in structured format.

Additionally, the Commission proposed to require structuring of the information in each filing fee table of Forms N–2, N–5, and N–14. We proposed to implement this requirement through amendments to Rule 405 of Regulation S–T [110] and the General Instructions in these forms.

b. Comments on the Proposed Amendments

Commenters expressed general support for the proposal to present all filing fee-related information in a structured format.[111] They cited, among other reasons, the following:

- Improved accuracy and disclosure; [112]
- Increased confidence of registrants in the accuracy of their calculated filing fees; [113]
- Easier management by the Commission staff and filers of complex calculations due to automation; [114] and
- Expected improved efficiencies in preparation, processing and analysis.[115]

Two commenters addressed several specific aspects of the proposal [116] and one of those commenters provided both its own views and the views of XBRL preparation vendors it surveyed.[117] These two commenters expressed the following views on specific aspects of the proposal: [118]

- Information to be Structured—
  - All filing fee information should be structured as proposed to enable ease of validation.
- Structuring Format—
  - Inline XBRL structuring should be required for all filing fee information as proposed because, among other reasons, it is machine-readable and searchable (in both cases, clearly and consistently), human readable, continually adapted to changing technology, able to be generated in multiple forms (*e.g.,* XML and HTML), and superior to XML because XML would require the creation of additional structure to consistently handle filing fee characteristics already included within the Inline XBRL standard and a Commission-developed non-standard structured data language would add to costs of preparation, collection and analysis;
  - Forms N–2, N–5, and N–14 should be structured in Inline XBRL, as proposed, for essentially the same reasons; and
  - The commenter cautioned that, while the Commission should remain open to the possibility that a standard that improves upon XBRL or Inline XBRL may be developed in the future, a switch to a different standard could result in market uncertainty and uncertainty about how data may need to be reported, and could increase the cost of tools and data access.
- Pilot Structuring Program—
  - A pilot structuring program would be helpful. Most vendors agreed, citing possible aid to program testing, gaining filing fee tagging knowledge and making process changes, but a minority did not agree, noting that XBRL requirements already are in place and a pilot would delay the anticipated benefits; [119] and
- Guidance—
  - The Commission should issue clear and consistent guidance for filers and vendors to address all possible scenarios. For example, the Commission should provide guidance on how to prepare a footnote when there is an offset. If the Commission does not provide guidance, then matters are likely to be handled in different ways.
- Additional Recommendations and Considerations
  - With filing fee information in structured format, the Commission could add more features to improve the accuracy of the calculation and facilitate the process and, as a result, the Commission should consider the following suggestions:
- Prompt filers to provide additional required information based on the rule reliance checkbox selected;
- Provide a mechanism through which a filer can run automatic validation against filing fee calculation so it could correct issues before submission; and
- Clarify how EDGAR will handle dual submission types (*i.e.,* Inline XBRL structured filing fee information coupled with non-Inline XBRL other information in the same filing).

c. Final Amendments

We are adopting the amendments largely as proposed with the changes noted below that we believe will enhance their operation.[120] We continue to believe that structuring the relevant data will greatly enhance the ability of filers and Commission staff to quickly identify and correct errors, as EDGAR's validation functionality will automatically check the structured filing fee-related information for internal consistency. Filers that use the Commission-provided option discussed below to construct structured filing fee-related information within EDGAR generally will receive validation and resulting error and warning messages before they submit both test and live filings.[121] Filers that construct this structured information outside of EDGAR, however, will receive validation and resulting error and warning messages after they submit both test and live filings.[122] While EDGAR will automatically compute the filing fee due using the structured data and validate the information submitted by the filer, validation failures caused by incorrect or incomplete structured filing fee-related information generally will result in a warning to filers and a flag for staff follow-up, but EDGAR will accept the filing. However, approximately three months after all filers are required to comply with the

[110] *See* proposed Rules 405(b)(3), (4), and (5) of Regulation S–T.

[111] *See* letters from Brittany Jones (Nov. 4, 2019) (''Jones''), Dominique Martinez (Nov. 7, 2019) (''Martinez''), XBRL US, and XBRL US Regulatory Modernization Working Group (Oct. 8, 2020) (''XBRL US WG'').

[112] *See* letter from Jones.

[113] *See* letter from XBRL US.

[114] *See* letter from XBRL US WG.

[115] *See* letter from XBRL US. The commenter cited several reasons for expecting improved efficiencies, including eliminating the need for the staff to manually review filing fee calculations. We believe that the final amendments will reduce the need for the staff to manually review filing fee calculations.

[116] *See* letters from XBRL US and XBRL US WG.

[117] *See* letter from XBRL US.

[118] Unless otherwise indicated, the views noted in the remainder of this section were expressed in the letter from XBRL US.

[119] Commenters also made specific suggestions about the timing of a possible pilot program and vendor access to an EDGAR stage level system for user acceptance testing, among other suggestions. *See* letters from XBRL US and XBRL US WG. In a subsequent letter dated Aug. 30, 2021, XBRL U.S. suggested that the Commission staff publish the taxonomy to be used in conjunction with the proposed structuring requirements as soon as possible.

[120] As noted above, we are adopting a modified version of the proposals to permit filers of Forms SF–1 and SF–3 to submit filing fee-related information in Inline XBRL. *See* Item 601(b)(107) of Regulation S–K and Section II.A.5.

[121] Validations that require access to information within the EDGAR system and outside the filing, such as validations relating to carry forwards and fee offsets, will not occur until after filing.

[122] The ability to validate the filing fee calculation is consistent with one commenter's suggestion to provide such a mechanism through which a filer could run an automatic validation against its filing fee calculation to enable it to correct issues before submission. *See* letter from XBRL US. A filer constructing structured information outside of EDGAR generally can obtain pre-live submission error and warning messages by first submitting a test filing. As noted in regard to filers that use the Commission-provided option to construct the structured information, validations that require access to information within the EDGAR system and outside the filing, such as validations relating to carry forwards and fee offsets, may not occur until after the test filing.

structured data requirement, the Commission will suspend filings rather than issue warnings for incorrect or incomplete structured filing fee-related information. Commission staff will provide advance notice of the specific date of the change to filers. This approach largely mirrors the current practice, where, for example, if certain information such as the filing fee due is not provided, the filing is suspended. Although we are extending this approach to more information (*i.e.,* any tagging errors or data omissions/errors in the filing fee exhibit will trigger a suspension), we believe that delaying suspensions until approximately three months after the last compliance date will give filers an opportunity to gain experience with the new tagging requirements and that—coupled with the availability of the new filing fee tool—will increase accuracy and thus minimize suspensions. We also believe that Inline XBRL will be a particularly useful method of structuring filing fee-related information because it eliminates the need to tag a copy of the disclosed information in a separate exhibit (as would be the case under traditional XBRL), and because Inline XBRL is consistent with the underlying format of the Affected Securities Act Forms and Schedules and statements under Rule 13e–1, as well as Forms N–2 and N–14.

To facilitate the filing fee process, the amendments require structuring of all filing fee-related information in an exhibit to each of the Affected Securities Act and Exchange Act Forms and Schedules and statements under Rule 13e–1, as well as Forms N–2 and N–14.[123] As proposed, the structuring for all of these filings will be done in Inline XBRL.

The structured information will include each filing fee table in the Affected Securities Act and Exchange Act Forms and Schedules and statements under Rule 13e–1 and Forms N–2 and N–14, together with accompanying explanatory disclosure as well as other information specified by the final filing fee exhibit requirements.[124]

As previously noted in discussing the content and location amendments, in a change from the proposal, the structuring requirements will apply to the contents of the filing fee exhibits rather than to information specified by the term ''General Interactive Data File.'' [125] We proposed to structure the filing fee-related information by reference to the term ''General Interactive Data File'' because the term swept in information that could be dispersed throughout the body of a filing and we believed the term provided a useful reference for an exhibit that would contain solely contextual information about the structured filing fee-related information.[126] The change from the proposal to centralize filing fee-related information in the filing fee exhibit enables us to impose the structuring requirement directly on the filing fee exhibit's content and, as a result, obviates the need for the term ''General Interactive Data File'' to specify that information. Based on the planned method of implementing the structuring framework, there will be no need for contextual information. Consequently, we are not revising § 232.11 (Rule 11 of Regulation S–T) to define the term ''General Interactive Data File.'' [127]

New Item 601(b)(107) of Regulation S–K, as adopted, will require filers of Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, and F–4 to structure their filing fee exhibits by submitting them as required by new Rule 408 of Regulation S–T. Rule 408, in turn, requires the filing fee exhibit to be submitted in Inline XBRL as provided by the EDGAR Filer Manual. As adopted, the same requirement will apply to the following by their terms or, in the case of prospectuses containing specified filing fee-related information, by final Rules 424(g) and (i): [128]

- Form F–10; [129]
- Prospectuses filed pursuant to Rule 424 containing filing fee-related information for an offering under Rule 456(b) or (c) or the maximum aggregate amount or maximum aggregate offering price and final prospectus status information that the final amendments will require in connection with certain Forms S–3, F–3, S–4, F–4, and N–2 regardless of whether a filing fee payment is due, or the prospectus contains a filing fee table; [130]
- Prospectuses filed in accordance with Rule 424(i);
- Statements under Rule 13e–1; [131]
- Schedules 13E–3,[132] 13E–4F,[133] TO,[134] and 14D–1F; [135]
- Fee-bearing Schedules 14A [136] and 14C; [137] and
- Forms N–2 and N–14.

Companies that file these documents often already will have experience structuring Commission documents in Inline XBRL. Issuers that file Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, F–10, N–2, and N–14 [138] generally are or

[123] Filing fee-related information in exhibits to prospectuses filed under Rule 424 and related to a registration statement under the Securities Act also will be required to be structured in Inline XBRL.

[124] As discussed below, we are adopting a modified version of the proposed approach by requiring Forms N–2 and N–14 to use the same structured data tagging requirements that we are adopting for similar Affected Securities Act and Exchange Act Forms and Schedules.

[125] *See* Section II.A.3.

[126] Contextual information includes, for example, a tagged amount's related fiscal period.

[127] In another change to the proposals, Item 601(b)(107) will permit but not require filing fee exhibits in Forms SF–1 and SF–3 to be structured in Inline XBRL. *See* Section II.A.5.

[128] In a conforming change from the proposal, we are not adopting proposed Rule 424(i) because it would have imposed a structuring requirement on filings pursuant to Rule 424(b) through the term ''General Interactive Data File''. In a further modification, we are instead adopting a revision to Rule 424(g) that will impose filing fee information exhibit requirements on filings pursuant to Rule 424 that reflect the payment of deferred fees under Rule 456(b) or (c) or include the maximum aggregate amount or maximum aggregate offering price of the securities to which the prospectus relates and final prospectus status as required by General Instruction II.F of Form S–3, General Instruction II.G of Form F–3, General Instruction II.D of Form SF–3, and General Instruction H of Form S–4. Revised Rule 424(g) also will impose structuring requirements on all of these filings except for those related to Form SF–3, which it will permit but not require to be structured.

After the Commission issued the Proposing Release, it adopted a new Rule 424(i), effective Aug. 1, 2020, in the Closed-End Fund Offering Reform Adopting Release. Effective Aug. 1, 2021, Rule 456(d) requires issuers that rely on Rule 456(d) to elect to register an offering of an indeterminate amount of exchange-traded vehicle securities to file a prospectus in accordance with final Rule 424(i). Rule 424(i) will require issuers to disclose specified information about filing fees they deferred in reliance on Securities Act Rule 456(d). In a conforming change, we are revising Rule 424(i) to require the filing fee information it specifies appear in an exhibit and be structured.

[129] *See* paragraph (107) to Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10.

[130] Filings related to Forms SF–3 that contain the specified information will be permitted but not required to structure the filing fee exhibit.

[131] *See* paragraph (c) to Rule 13e–1.

[132] *See* paragraph B of the General Instructions of Schedule 13E–3.

[133] *See* paragraph A(1) of Part II (Filing Instructions and Fees) of the General Instructions of Schedule 13E–4F.

[134] *See* Instruction 1.D to the Calculation of Filing Fee Tables in new Item 12(b) of Schedule TO.

[135] *See* Instruction 1.E to the Calculation of Filing Fee Tables in new paragraph (4) under Part II—Information Not Required To Be Sent To Shareholders of Schedule 14D–1F.

[136] *See* Instruction 1.D to the Calculation of Filing Fee Tables in new Item 25(b) of Schedule 14A.

[137] *See* Item 1 of Schedule 14C. The Commission proposed to revise the cover page of Schedule 14C to expressly require the filing fee-related information that proposed Item 25(b) of Schedule 14A would require. This proposed revision is unnecessary because Item 1 of Schedule 14C requires compliance with relevant items of Schedule 14A, as applicable. We are, however, revising the Schedule 14C cover page to replace the checkbox text reference to a filing fee computed on the ''table below'' per the applicable Exchange Act filing fee rules with a reference to a filing fee computed on the table in the exhibit required by Item 25(b) of Schedule 14A per Item 1 of Schedule 14C and the applicable Exchange Act fee rules.

[138] We anticipate that registered closed-end funds (that are not interval funds) and BDCs will be the

will be, as a result of the phase-in of various Inline XBRL requirements or, in some cases, the need to file Exchange Act periodic and current reports, required to file their financial statements in Inline XBRL. For example, annual reports on Forms 10–K, 20–F, and 40–F, quarterly reports on Form 10–Q, current reports on Form 8–K, and reports on Form 6–K under the Exchange Act are or will be subject to financial statement Inline XBRL tagging requirements.[139] All of these Exchange Act reports, other than Form 6–K, as well as Form N–2, also are, or will be, subject to cover page structuring requirements.[140] In some instances, entities that file fee-bearing documents that do not currently require Inline XBRL already will have experience filing their financial statements and Exchange Act cover page information in Inline XBRL.[141]

Additionally, we are adopting amendments that will, as proposed, require investment companies to use Inline XBRL to structure the filing fee-related information required in Forms N–2 and N–14. No commenter specifically addressed the proposed approach for implementing the filing fee structured data requirement for funds, other than to recommend that we require funds to use Inline XBRL to tag all filing fee-related information, as proposed.[142] However, we believe that requiring a consistent approach to the data tagging requirements for similar forms with the same or similar disclosures will reduce confusion and simplify the process for filers and Commission staff. Accordingly, in a change from the proposal, we are not adopting the proposed amendments to Rule 405 or Forms N–2 and N–14.[143] Instead, we are conforming the structured data requirements for Forms N–2 and N–14 to largely mirror the approach we are adopting for the Affected Securities Act and Exchange Act Forms and Schedules. Specifically, we are amending the General Instructions in Forms N–2 and N–14 to require the specified filing fee exhibits to be submitted as structured data in the manner provided by Rule 408 of Regulation S–T.[144]

Consistent with the views of commenters[145] and the XBRL vendors that one of them surveyed[146] favoring a pilot program and vendor access to an EDGAR stage-level system for user acceptance testing, the amendments will permit all filers to file their filing fee-related information structured in Inline XBRL prior to the compliance date for each category of filers[147] and we will make available a separate filing agent test system, respectively.[148] Filers will be able to file under the amendments once the EDGAR system has been modified to accept filing fee-related information in Inline XBRL for all fee-bearing documents subject to the amendments, which is anticipated to be approximately six months before the earliest compliance date.[149] Commission staff plans to make the taxonomy for the structured data available close to the time that the filer agent system is opened for testing. Notice of EDGAR system readiness to accept filing fee-related information in Inline XBRL will be provided in a manner similar to notices of taxonomy updates and EDGAR Filer Manual updates.[150] We believe that offering filers the option to file filing fee-related information using Inline XBRL before the compliance date will enable filers that are ready to transition to Inline XBRL to begin realizing the benefits of doing so sooner. We also believe that this option and the filing agent test system will enable vendors and filing agents[151] used by early adopters to gain valuable expertise that may help facilitate the transition for filers that transition at a later time. While neither the early compliance option nor the filing agent test system is a formal pilot program, they should serve much the same purpose of providing an opportunity to filers, filing agents and the Commission to gain experience with the technical aspects of the new rules. Filers that do not choose to file filing fee-related information using Inline XBRL prior to the applicable compliance date will continue to be required to submit the filing fee-related information in compliance with the then applicable content and location requirements in the same format as they do currently.[152]

We acknowledge a commenter's recommendation that we issue guidance for filers and vendors to address all possible scenarios to avoid having filers handle them in different ways.[153] We believe the amendments, as adopted, provide sufficient details to enable filers to provide the information in a

only Form N–14 filers required to provide, and thus tag, the filing fee exhibit. The vast majority of investment companies that file on Form N–14 pay registration fees on Form 24F–2 and will not be subject to these requirements.

[139] For a general discussion of the financial statement tagging requirements applicable to Securities Act and Exchange Act forms, s*ee* Operating Company Financial Statement Tagging Release and the Inline XBRL Release, *supra* note 13. The Commission recently adopted amendments that, among other things, required BDCs to tag their financial statements using Inline XBRL. *See* Closed-End Fund Offering Reform, *supra* note 2.

[140] For a general discussion of the Exchange Act report cover page tagging requirements, s*ee FAST Act Modernization and Simplification of Regulation S–K,* Release No. 33–10618 (Mar. 20, 2019) [84 FR 12674 (Apr. 2, 2019)] (''FAST Act Adopting Release'') as corrected at 84 FR 13796 (Apr. 8, 2019) and *FAST Act Modernization and Simplification of Regulation S–K; Correction,* Release No. 33–10618A (Aug. 6, 2019) [84 FR 39966 (Aug. 13, 2019)] (collectively, ''FAST Act Release''). Registered closed-end funds and BDCs are also subject to Form N–2's cover page tagging requirements. *See* Closed-End Fund Offering Reform, *supra* note 2.

[141] For example, an issuer filing a Schedule 13E–3 with regard to itself already would be subject to reporting obligations under the Exchange Act and, as a result, very likely already be subject to Inline XBRL financial statement and cover page structuring requirements. Similarly, a registered closed-end fund or BDC that files a registration statement on Form N–14 will already be subject to Inline XBRL prospectus disclosure and cover page structuring requirements.

[142] *See* letter from XBRL US.

[143] In a change from the proposal, and to facilitate the relocation of the filing fee table from the cover page to an exhibit, we are amending Rule 405(b)(3)(ii) to remove the reference to ''the Calculation of the Registration Fee table.''

[144] General Instruction I.4 of Form N–2; General Instruction H.1 of Form N–14.

[145] *See* letters from XBRL US and XBRL US WG.

[146] *See* letter from XBRL US.

[147] A filer that voluntarily chooses to structure a filing fee exhibit before its compliance date, will still be free to structure or not structure its filing fee exhibits until its compliance date.

[148] Filing agents that are enrolled in the EDGAR Testing Program will have the ability to access a separate system dedicated to testing the filing fee exhibit submission requirements. We expect this test system to be available no later than six months prior to the compliance date for large accelerated filers.

[149] One commenter suggested a pilot program of at least six months before the first compliance date, during which time the EDGAR system is able to successfully accept filings, to identify and resolve unanticipated problems as early adopters make submissions. *See* letter from XBRL US WG. Another commenter stated that the vendors it surveyed suggested a pilot program of three to 12 months. *See* letter from XBRL US.

[150] *See* EDGAR News & Announcements at *https://www.sec.gov/filergroup/announcements* (retrieved Sept. 25, 2021).

[151] Some of the vendors surveyed may also be what we refer to as filing agents. *See* letter from XBRL US.

[152] As further discussed in Section II.A.6.c, compliance with the amended filing fee-related information content and location requirements will be required before compliance with the structuring requirements.

[153] *See* letter from XBRL US. The commenter asked, in particular, that we clarify how EDGAR will handle submissions in which some information is structured in Inline XBRL and other information is not. EDGAR will continue to be able to process submissions with multiple permitted formats. We note in this regard that filing fee-related information currently is not permitted to be submitted in XBRL (whether or not the tags appear separate from the HTML information as in traditional XBRL or the tags are embedded in the HTML as in Inline XBRL). We also note that under the final amendments filers will not be permitted to submit filing fee-related information in traditional XBRL but, rather, only in Inline XBRL. Finally, we note that by the time filers are subject to filing fee-related information structuring requirements, if they also are subject to financial statement information structuring requirements, they would be required to provide their financial statement information in Inline rather than traditional XBRL.

consistent format. We plan, however, to monitor implementation and may issue guidance or take other action as needed.

Currently, most types of EDGAR filings, including all of those subject to the filing fee-related information structuring requirements, are formed outside of Commission filer websites. Some EDGAR filings, however, such as ownership reports on Forms 3,[154] 4,[155] and 5 [156] and notices of exempt offerings of securities on Form D [157] may be filed using a Commission filer website within which the filer can construct and submit these forms. The Commission will provide filers the option to construct structured filing fee-related information within EDGAR using a filing fee tagging tool that will include features such as prompts, explanations, and automated calculations and produce a filing fee exhibit in submission-ready format.[158] This tool and these features are consistent with a commenter's suggestion that because the filing fee-related information will be structured, the Commission could add features to improve the accuracy of calculation and facilitate the process and, as a result, should consider prompting filers to provide additional required information.[159]

5. Scope of Proposed Amendments

a. Proposed Amendments

The proposed content and structuring amendments described in Sections and II.A.3 and II.A.4 above would apply to the Affected Securities Act and Exchange Act Forms and Schedules, statements filed under Rule 13e–1 and Forms N–2, N–5, and N–14. These amendments would not apply, however, to Forms SF–1,[160] SF–3,[161] S–20,[162] F–6,[163] F–7,[164] F–8,[165] and F–80 [166] under the Securities Act or foreign government registration statements filed pursuant to Schedule B of the Securities Act [167] even though all of these are fee-bearing documents.[168] As the Proposing Release noted, relatively few of these documents are filed with the Commission and the issuers that file them may not otherwise be subject to Commission XBRL structuring requirements.

As the Proposing Release also noted, ABS issuers are required to file on Forms SF–1 and SF–3 and, as a result, may be subject to Commission requirements to structure information in XML.[169] We did not, however, propose to require any ABS issuers to structure filing fee-related information in XML.[170] As further discussed in the Proposing Release and below, we believed that duplication of information resulting from XML structuring would not contribute to facilitating the primary benefits of structuring filing fee-related information.

b. Comments on the Proposed Amendments

As noted above, one commenter addressed the scope of fee-bearing documents that we proposed to revise and stated that we should structure all fee-bearing documents' fee information to enable consistency of preparation and usage.[171]

c. Final Amendments

We are adopting content and structuring amendments that apply to substantially the same scope of fee-bearing documents as proposed with modifications intended to extend the benefits of the content amendments and make the benefits of the structuring amendments available to similar forms. The content and structuring amendments will apply, as proposed, to the Affected Securities Act and Exchange Act Forms and Schedules, and statements filed under Rule 13e–1. These amendments will also apply to Forms N–2 and N–14, but, in a change from the proposal, not to Form N–5.

Consistent with the proposed rules, the amendments will not apply to Forms S–20, F–6, F–7, F–8, and F–80 or foreign government registration statements filed pursuant to Schedule B and the structuring requirement amendments will not apply to Forms SF–1 and SF–3. As noted in the Proposing Release and above, relatively few of these documents are filed with the Commission and the issuers that file them may not otherwise be subject to Commission structuring requirements. For the same reasons, and in a change from the proposal, we are not adopting the proposed amendments to Form N–5.[172]

Although some ABS issuers already are subject to XML structuring requirements, we are not adopting amendments to require any ABS issuers to structure filing fee-related information in XML. A filer structuring filing fee-related information in XML would need to enter it twice—once in HTML and once in the XML document.[173] The manual process of entering the same data elements in more than one place increases the possibility of filer errors, such as re-keying errors or errors where information is modified in one location but not the other. Presenting filing fee-related information in Inline XBRL will eliminate the need to enter duplicate filing fee information and enable the planned removal over time of the duplicate filing fee information requirements and, as a result, the possibility of inconsistent filing fee information between different parts of the filing.[174]

Due to these factors, we believe that the potential gains from extending the mandated content and structuring amendments to these documents would not justify the burdens.

In a change from the proposal, however, we are extending the amendments' content and location, but not structuring, requirements to Forms SF–1 and SF–3 to conform them to the other Securities Act forms subject to the

[154] 17 CFR 249.103 and 274.202.

[155] 17 CFR 249.104 and 274.203.

[156] 17 CFR 249.105.

[157] 17 CFR 239.500.

[158] A filer using the tool will, however, remain responsible for its output. A filer can opt to construct its disclosure without use of the tool as, for example, filers do with respect to Inline XBRL financial statement information.

[159] *See* letter from XBRL US.

[160] 17 CFR 239.44.

[161] 17 CFR 239.45.

[162] 17 CFR 239.20.

[163] 17 CFR 239.36.

[164] 17 CFR 239.37.

[165] 17 CFR 239.38.

[166] 17 CFR 239.41.

[167] 15 U.S.C. 77aa.

[168] As discussed above, we proposed to add row (107) to the exhibit table in Item 601(a) of Regulation S–K and paragraph (107) to Item 601(b) to require Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, and F–4 to include a General Interactive Data File and, as a result, require each form to include its filing fee-related information in structured format. The Proposing Release's exhibit table rule text inadvertently included, however, check boxes for forms SF–1 and SF–3 indicating they would be subject to the structuring requirements. Those errors have been corrected in the corresponding final rule text of this adopting release.

[169] Item 7(a) of Part I of each form requires the issuer to disclose the information required by § 229.1111 (Item 1111 of Regulation AB). Item 1111(h) requires the issuer to file an ''Asset Data File'' when the offering is based on an asset pool including residential mortgages, commercial mortgages, automobile loans or leases, debt securities, or resecuritizations of ABS. Rule 11 of Regulation S–T defines the term ''Asset Data File'' as the machine-readable computer code that presents information in XML pursuant to Item 1111(h).

[170] The Commission estimated that during calendar year 2020, 4 of 14 unique filers of at least one Form SF–1 or SF–3 were subject to the XML requirement. ABS issuers are not subject to financial statement structuring requirements. *See* Inline XBRL Release, *supra* note 13 at n.6

[171] *See* letter from XBRL US.

[172] None of the comment letters we received discussed Form N–5. However, based on staff review of Commission filings, Form N–5 has only been filed four times since 2005 (and not at all since 2013). Of these, three filings were submitted by SBICs that are subsidiaries of BDCs and never made a public offering, and the other SBIC de-registered last year. In addition, SBICs are not currently required to use Inline XBRL to tag information on other Commission forms.

[173] In contrast, a filer structuring in Inline XBRL need only enter it once in HTML.

[174] *See supra* Section I.

amendments.[175] Based on the similarity between Forms SF–1 and SF–3 on the one hand, and the other Securities Act forms subject to the amendments on the other, we believe the conforming amendments will similarly facilitate filing fee determination, information presentation, and capacity tracking with respect to Forms SF–1 and SF–3.

We acknowledge the comment stating that we should structure all fee-bearing documents' fee information to enable consistency of preparation and usage.[176] In order to do this, we would first have to extend both the content and location amendments to all fee-bearing documents, not just those that we proposed to amend. Due to the factors stated above, we believe that the potential gains from extending these amendments to the additional forms would not justify the burdens. We also believe, however, that because we are extending the content and location requirements to Forms SF–1 and SF–3, we should permit these filers to obtain the benefits of structuring the filing fee-related information if they choose and are revising the proposal to do so.[177]

6. Transition Period

a. Proposed Amendments

The Commission proposed to phase in the structuring requirements over time but otherwise require compliance upon effectiveness of the rules. As proposed, filers would be categorized into large accelerated filers, accelerated filers and all other filers (including all investment companies filing registration statements on Forms N–2, N–5, and N–14) and required to comply with the structuring requirements beginning with filings submitted on or after 18, 30, and 42 months after the requirements' effectiveness, respectively.[178] As further discussed in the Proposing Release, this approach was intended to facilitate the transition of filers to the structuring requirements that would apply to filing fees and related information.

b. Comments on the Proposed Amendments

One commenter, on its own behalf and on behalf of XBRL vendors it surveyed, addressed the proposed phase-in.[179]

The commenter reported that the vendors were split on whether first-time XBRL filers should have a longer phase-in, as well as the value of a phase-in for smaller reporting companies. It stated that some vendors thought a phase-in for first-time XBRL filers was unnecessary due to cost and burden reductions over time, marketplace developments and adequate filer resources while others thought these filers should have more time to identify appropriate resources and gain an internal skillset. It further stated that a slight majority of vendors favored a phase-in for smaller reporting companies based on their relatively limited resources while the rest opposed one, citing lowered XBRL burden in general, the fact that smaller reporting companies will be reporting in Inline XBRL anyway by the time filing fee structuring is in place, that filing fee tagging would be a minor addition and providing a single compliance date for all companies would reduce confusion for filers, vendors and data users.

The commenter stated that investment companies that have not previously filed XBRL should have additional time to transition and cited a need to develop XBRL preparation tools and become knowledgeable about the XBRL process.

Finally, the commenter stated that that non-XBRL filers may have more significant challenges the first time they file their EDGAR submissions in XBRL format. The commenter reported that a majority of the vendors indicated that filers may need to engage additional departments such as legal and compliance, and one vendor stated that, if an error is identified by the issuer in the fee or fee calculation table, it may be necessary for the issuer to undertake an internal approval process because the error could not be corrected simply by re-entering information in the submission header.

c. Final Amendments

We are adopting a phase-in period but modifying some of the proposed phase-in categories and compliance dates. As proposed, we are phasing in the requirements over time starting with large accelerated filers. In a change from the proposal, we are delaying their compliance date from 18 to 30 months after the requirements' effectiveness. Similarly, in a change from the proposal, we are delaying the compliance date for accelerated filers from 30 to 42 months after the requirements' effectiveness. As a result of delaying the compliance date for accelerated filers, they will fall within the same category as investment companies that file registration statements on Forms N–2 and N–14 and all other filers. We are adopting these delays because of the required system development's breadth and technical complexity and to provide additional time for filers to have the option to structure their filing fee exhibits before being required to do so and for filing agents to test the system. Consequently, the structuring requirements will be phased in over time as follows but compliance with the other requirements will be mandatory upon the requirements' effectiveness:

Filer	Compliance date [180]
Large accelerated filers	Filings submitted on or after 30 months after the requirements' effectiveness (July 31, 2024).
Accelerated filers, certain investment companies that file registration statements on Forms N–2 and N–14, and all other filers.	Filings submitted on or after 42 months after the requirements' effectiveness (July 31, 2025).

[175] *See supra* Section II.A.5 for a discussion of extending the content and location requirements to Forms SF–1 and SF–3.

[176] *See* letter from XBRL US.

[177] *See* Item 14(b) of Forms SF–1 and SF–3.

[178] For purposes of these transition provisions, the terms ''large accelerated filer'' and ''accelerated filer'' are defined in § 240.12b–2 (Exchange Act Rule 12b–2). Rule 12b–2 defines a large accelerated filer as an issuer that as of specified times has an aggregate public float over $700 million, has been subject to Exchange Act reporting requirements for at least a year, has filed at least one Exchange Act annual report and is not able to use certain ''smaller reporting company'' provisions. Rule 12b–2 similarly defines accelerated filer but with a public float between $75 million and $700 million.

[179] *See* letter from XBRL US.

[180] The requirement to structure filing fee exhibits in filings submitted on or after the relevant compliance date applies regardless of whether previous related filings were submitted prior to the compliance date and did not contain a structured filing fee exhibit. For example, if a filer initially filed a registration statement on Form S–1 without a structured filing fee exhibit before its compliance date and filed a pre-effective amendment registering additional securities after that date, the filer will be required to structure the filing fee exhibit in that pre-effective amendment. Similarly, if a shelf registration statement was filed on Form S–3 without a structured filing fee exhibit that went effective before the filer's compliance date and the filer then filed a related prospectus under Rule 424(b) with a filing fee exhibit after the filer's compliance date, the filer must structure the filing fee exhibit. Also similarly, if a Schedule TO was filed without a structured filing fee exhibit before the filer's compliance date and the filer then filed an amendment to the Schedule TO to increase the transaction value after the filer's compliance date, the amended Schedule TO must include a structured filing fee exhibit.

Consistent with the Proposing Release, we believe that this approach will facilitate the transition of filers to the structuring requirements that will apply to filing fees and related information. It is intended to ease the cost of transition for smaller filers and filers that have not previously been required to provide filings using Inline XBRL.[181] Because any fixed cost of initial transition will disproportionately burden smaller filers, this approach will give these filers time to develop related expertise, as well as the opportunity to benefit from the experience of larger filers with the structuring requirements. The phase-in might also provide filing agents and software vendors whose main customers are smaller filers with additional time to develop the needed technology and related expertise. We recognize that divergent views on the phase-in were expressed in the comments, with some favoring and others opposed to more time for first-time XBRL filers and for smaller reporting companies. We believe that the phase-in process will provide an appropriate time for filers to transition and is unlikely to cause significant confusion.

Finally, as noted above, filers will be permitted to file the structured information prior to the compliance date for their category.

B. Fee Payment Process

1. Proposed Amendments

The Commission proposed to amend Rule 202.3a (''Rule 3a'') of the Commission's Informal and other Procedures as well as Rule 111 under the Securities Act, Rule 0–9 under the Exchange Act and Rule 0–8 under the Investment Company Act to add the option for payment of filing fees via ACH.[182] The Commission also proposed to eliminate the option for payment of these fees via paper checks and money orders.

Currently, filing fees are paid through the U.S. Treasury designated lockbox depository and may be paid by wire transfer, paper check, or money order.[183] Under the proposed amendments, filers would have two payment options: Wire transfer or ACH.[184] As we noted in the Proposing Release, paying by ACH would typically provide a lower cost alternative to wire payment and require information that would reduce the need for manual re-routing of filing fee payments. Eliminating the options to pay filing fees by paper check or money order would impose very little burden on filers in the aggregate because they have been little used,[185] filers who use the remaining options would have a more efficient process, and the switch also would lower Commission processing costs.

We believed that, overall, these amendments would increase efficiency and reduce burdens in processing filing fee payments.[186]

2. Comments on the Proposed Amendments

Commenters generally favored the proposed amendments to add the ACH option, but presented mixed views on the proposed amendments to eliminate the paper check option.

The commenters that generally favored the proposed amendments to add the ACH option[187] cited the following reasons, among others, and expressed related observations[188] and suggestions:

- Network security,[189] reliability[190] and wide availability;[191]
- Improved efficiency[192] and accuracy;[193]
- Current use by public companies and the Federal Government;[194] and
- Standard practice in other contexts for many years.[195]

Some of these commenters stated that the Commission should, for a fee, accept debit and credit cards for filing fee payments and, thereby, provide an alternative for foreign issuers.[196] One commenter cited as a reason the Commission's bank's inability to accommodate SWIFT.[197] One of these commenters further stated that the Commission should:

- Specify *Pay.gov* rather than ACH in regulatory text so the Commission can accommodate new payment technologies in the future without engaging in additional rulemaking; and
- Consider integrating into its payment system the ISO20022 tool, which the commenter described as an XML-based messaging standard that allows better straight-through processing.[198]

Three commenters addressed the proposed amendments to eliminate paper checks and money orders. One commenter expressly favored the proposed elimination of paper checks and money orders, citing improved payment certainty, efficiency and processing by facilitating lower-cost easily routable payments through the ACH Network as well as improved security.[199] Another commenter stated that the Commission should consider that some foreign entities may want to pay by check because the Commission's bank is unable to accommodate SWIFT.[200] Finally, one commenter suggested that the Commission keep the

[181] All domestic and foreign operating company filers subject to financial statement XBRL requirements will be phased in to the Inline XBRL requirements for this information by the time they will be required to comply with the adopted filing fee-related information structuring requirements. For the related phase-in schedule, *see* Inline XBRL Release, *supra* note 13.

[182] The proposed amendments also would revise Rule 13 under Regulation S–T to reflect the fact that payments would be permitted via ACH. In addition, the proposed amendments would revise Item 9 of Form 24F–2 to replace ''Mail or other means'' with ''ACH'' as a registration fee delivery option.

The Proposing Release discussed the challenges the Commission understood that foreign filers may have with paying by wire transfer or ACH. The Commission noted, among other challenges, that foreign filers often use the ''SWIFT'' code transfer system, but the Commission's bank does not accept it. The Society for Worldwide Interbank Financial Telecommunications (''SWIFT'') publishes business identifier codes that are an international standard for identification of institutions within the financial services industry. *See* BIC at *https://www.swift.com/search?keywords=BIC&search-origin=result_search* (retrieved Sept. 25, 2021). We discuss the challenges more fully below.

[183] Rule 202.3a under the Commission's Informal and Other Procedures provides instructions for the payment of filing fees (*e.g.,* where to direct a wire transfer). As to checks and money orders, it provides that filers may use a certified check, bank cashier's check, United States postal money order, or bank money order pursuant to specified procedures.

[184] A filing fee is paid via ACH by electronically transferring funds from a checking or savings account. *See* How Direct Payments Work at *https://www.nacha.org/content/how-direct-payment-works* (retrieved Sept. 25, 2021). For example, a consumer initiating a payment through a bank account to pay a debt is making a payment via ACH.

[185] The Proposing Release noted that filing fees paid by check constituted less than one percent of the number and dollar value of filing fee payments the Commission received during its fiscal year ended Sept. 30, 2018.

[186] The Proposing Release's rule and form amendment text inadvertently included a revision to Rule 202.3a(c). We did not intend to change that paragraph.

[187] *See* letters from James J. Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University (Oct. 30, 2019) (''Angel''); Jones; Jeff LaBerge (Jan. 17, 2020) (''LaBerge''); Nash Larson (Nov. 10, 2019) (''Larson''); Martinez; and National Automated Clearing House Association (Feb. 21, 2020) (''NACHA'').

[188] These commenters observed that ACH payments are not instant and only operate on banking days (s*ee* letters from Angel and LaBerge); and the same day ACH payment maximum referenced in proposed Rule 3a as $25,000 would become $100,000 as of March 20, 2020 (s*ee* letter from NACHA).

[189] *See* letters from Jones (more secure than paper checks and money orders) and NACHA.

[190] *See* letter from NACHA.

[191] *See* letter from NACHA.

[192] *See* letters from Jones, Larson, and NACHA.

[193] *See* letters from Jones and Martinez.

[194] *See* letter from NACHA.

[195] *See* letter from Jones.

[196] *See* letters from Angel, LaBerge, and Larson.

[197] *See* letter from LaBerge.

[198] *See* letter from Angel.

[199] *See* letter from NACHA.

[200] *See* letter from LaBerge.

paper check option until filers no longer use it.[201]

3. Final Amendments

We are adopting the amendments substantially as proposed, but with modifications in response to comments received and clarified processing information and to otherwise improve them. Consistent with the proposal, we are adopting amendments to Rule 202.3a of the Commission's Informal and other Procedures as well as Rule 111 under the Securities Act, Rule 0–9 under the Exchange Act and Rule 0–8 under the Investment Company Act to add the option for payment of filing fees via ACH.[202] Also consistent with the proposal, we are adopting amendments to eliminate the option for payment of these fees via paper checks and money orders. Finally, in changes from the proposal, we also are adding the options for payment of filing fees by debit or credit card, clarifying where to access the ACH payment option, and replacing the reference to same day settlement for ACH with a reference to payments expected to become available to the Commission within one to three business days.[203]

As previously noted, currently, filing fees are paid through the U.S. Treasury designated lockbox depository and may be paid by wire transfer, paper check, or money order. The amendments that we are adopting will simultaneously add the option for filing fee payment via ACH and debit and credit cards, and eliminate the option for filing fee payment via paper checks and money orders on May 31, 2022.[204] Under the final amendments, filers will have four payment options: Wire transfer, ACH, and debit and credit cards.

Pay.gov will not require a processing fee for ACH payments, and thus, will typically provide a lower cost alternative to wire payment.[205] At the same time, ACH payments will require fields—including the CIK field used to identify EDGAR filers—in the specified proper format and, as a result, reduce the need for manual re-routing of filing fee payments.[206] To maintain flexibility regarding our choice of payment processing providers and reflect the initial step required to make payment, the final rules reference accessing the ACH payment option through EDGAR rather than through *Pay.gov*.[207] Consistent with existing arrangements the Commission has with the U.S. Treasury, however, we will use the U.S. Treasury's *Pay.gov* service to process ACH payments.[208] While, in the banking system, ACH payments generally are eligible for same day settlement except when they involve amounts above $100,000 [209] or international transactions,[210] based on clarification received, we expect ACH payment processing via *Pay.gov* will result in one to three business day settlement rather than same day settlement where otherwise available in the banking system.[211] Consequently, we are modifying proposed Note 1 to paragraph (b) of Rule 3a to replace the reference to same day settlement for ACH with a reference to expecting funds to be available to the Commission within one to three business days.[212]

Consistent with commenters' suggestions,[213] in a change from the proposal, we are adding the options for payment of filing fees by debit or credit card.[214] We believe that filers may find these additional options, accessible through EDGAR, useful and they are consistent with efficient processing.[215] Also consistent with existing arrangements the Commission has with the U.S. Treasury, we will use the U.S. Treasury's *Pay.gov* service to process debit and credit card payments for each brand it supports.[216] As a result, each

- Debit and credit card must be issued by a U.S. financial institution;
- debit card may be used to pay up to the amount of the funds available in the filer's related account; and
- credit card is subject to a daily and per filing fee payment limit under $25,000.

While these commenters also suggested we accept debit and credit cards for a fee, we do not anticipate a fee will be charged for use of the payment system but it is possible the debit or credit card issuer will charge a fee that would not be imposed through *Pay.gov*. Similar to wire transfers and ACH payments, debit and credit card payments are not instantaneous and the related funds will not be available for filing fee payment until the Commissions receives them.[217] In general, debit and credit card payments are expected to be available to the Commission the next business day and within 24 hours of the transaction, respectively. Consequently, filers should time their payments and filings accordingly. Similar to ACH payments, debit and credit card payments will go through validation with respect to the filer's CIK number to reduce the risk of posting the payment to the wrong account.

We decline to follow one commenter's suggestion that we specify *Pay.gov*

[201] *See* letter from Jenna Wilson (Jan. 1, 2020) (''Wilson'').

[202] As proposed, the final amendments also will revise Rule 13 under Regulation S–T to reflect the fact that payments will be permitted via ACH.

In a change from our proposed amendments to Rule 0–8, we are adding ''filing'' to the title and text, consistent with Rules 111 and 0–9. In addition, we are not amending Item 9 of Form 24F–2 to replace ''Mail or other means'' with ''ACH'' as a registration fee delivery option, as proposed. Instead, we are eliminating Item 9 of current Form 24F–2 in its entirety. We are making this change to avoid unnecessary duplication, since the payment information that Item 9 currently requires is also required in the header. This approach is also consistent with the other fee-bearing forms subject to this rulemaking, which only require this type of payment information in the header. In a conforming change, we are retitling and revising Instruction E of Form 24F–2 to remove the reference to Item 9. In another conforming change, we are renumbering Item 10 of current Form 24F–2 which will become Item 9 of amended Form 24F–2.

[203] In a change from the proposal, we also are adding references to debit and credit cards to Securities Act Rule 111, Exchange Act Rule 0–9, and Investment Company Act Rule 0–8. The proposed rule text inadvertently deleted references to § 230.110(d) (Securities Act Rule 110(d)) from the heading and introductory text of Rule 202.3a(c). The error has been corrected in the final rule text in this adopting release.

[204] A delay is required before the simultaneous addition and deletion to put the necessary arrangements in place.

[205] An issuer's financial institution, however, could separately impose a fee on the issuer.

[206] The Commission will neither obtain nor retain any personally identifiable information (*i.e.,* banking or routing information) from filers using the ACH payment method.

[207] *See* Rule 202.3a(b)(2).

[208] *Pay.gov* will be available through EDGAR.

[209] Proposed Rule 3a referenced $25,000 rather than $100,000. A commenter pointed out the post-proposal increase. *See* letter from NACHA.

[210] In the same day settlement context, the term ''international transactions'' means transactions involving a foreign payor that uses a U.S. bank account.

[211] We also expect *Pay.gov* service use will result in a per transaction ACH payment limit of $99,999,999.99.

[212] Once funds become available to the Commission through its bank, *e.g.,* upon settlement of a check, the funds are posted to the filer's account and, as a result, are available for filing fee payment. Check and money order payments generally are, and ACH payments are expected to be, posted to filer accounts once a day. Wire payments generally are posted to filer accounts every five minutes between 6:30 a.m. and 6:30 p.m., Washington, DC time. Debit and credit card payments are expected to be posted to filer accounts every fifteen minutes when EDGAR is available.

[213] *See* letters from Angel, LaBerge, and Larson.

[214] We will neither obtain nor retain any personally identifiable information (*i.e.,* debit or credit card numbers, expiration dates or card security codes) from filers using the debit and credit card payment methods.

[215] The debit and credit card payment methods, similar to the ACH payment method, will have less need for manual re-routing because a filer must provide a CIK number that EDGAR will validate. These methods also will be more efficient than the currently permitted check and money order payment methods for which a filer must obtain the check or money order from a financial institution or the United States Postal Service and send a hard copy to the Commission's bank.

[216] *Pay.gov* currently supports MasterCard and Visa debit cards. It also currently supports the following credit cards: American Express, Discover-branded, MasterCard, and Visa.

[217] *See* Note 1 to paragraph (b) of Rule 3a.

rather than ACH in the regulatory text.[218] We understand that wire transfers cannot be done through *Pay.gov* and we do not wish to exclusively specify *Pay.gov* or any other specific avenue through which to process payments to maintain flexibility in that regard.

We do, however, plan to follow the commenter's suggestion that we consider integrating into our payment system the ISO20022 standard, which the commenter described as an XML-based messaging standard that allows better straight-through processing.[219] We expect to consider this feature, among others, as we develop the payment system.

Eliminating the options for filers to pay filing fees by paper check or money order will impose very little burden on filers in the aggregate because these payment methods historically have represented less than one percent of the number and dollar value of filing fee payments the Commission receives.[220] Filers who switch from checks to wire, ACH or debit or credit card payments will have more efficient and accurate processing. The switch away from checks also will lower Commission processing costs, in part by eliminating the Commission's need to maintain a separate lockbox to process these payments. Consistent with one commenter's suggestion, we have considered that, as discussed further below, some foreign entities may want to pay by check because the Commission's bank is unable to accept SWIFT.[221] We have concluded, however, that adding debit and credit card options, as the commenter also suggested that we do for the same reason, coupled with the wire transfer and ACH options and de minimis use of checks, warrant eliminating the check option. For the same reasons, we decline to follow a commenter's suggestion to keep the check option until filers no longer use it.[222]

As discussed briefly above, we understand that foreign filers sometimes have difficulty paying by wire transfer and will not be able to pay by ACH unless they have a U.S. bank account. Foreign filers sometimes encounter issues when paying filing fees using wire transfers. These issues usually are caused by differences in the way wire transfers are processed in the U.S. compared to the filer's home jurisdiction. Foreign filers often use the SWIFT code transfer system but our U.S.-based bank does not accept it. When that occurs, our bank does not receive the payment and it ultimately returns to the sender institution. In cases where foreign filers are unfamiliar with the U.S. American Bankers Association (''ABA'') routing number convention, our staff advises the filer to escalate the matter within its bank to a person more familiar with the international wire process. Under the final amendments, however, foreign (and other) filers also will have the ability to pay by debit or credit card, giving foreign filers more payment options and consistent with comments received.[223]

Overall, we believe that the final amendments will increase efficiency and reduce burdens in processing filing fee payments.

C. Fee Offset Amendment

1. Proposed Amendment

We proposed to permit registrants to reallocate previously paid filing fees between two or more classes of securities included on a registration statement, prior to effectiveness, in reliance on Rule 457(b). As proposed, the reallocation would be available in cases in which a registrant has not relied on Rule 457(o) to calculate a required filing fee and wishes to increase the amount registered of one or more classes of securities on the registration statement and decrease the amount registered of one or more other classes on the same registration statement, subject to further limitations more fully described in the Proposing Release. In addition, the proposed amendment would put filers not relying on Rule 457(o) on a more equal footing with filers relying on Rule 457(o) with respect to whether additional fees would be required given changes in the relative composition of securities to be offered.

2. Comments on the Proposed Amendment

No commenter addressed the proposed filing fee offset amendment.

3. Final Amendment

We are adopting the filing fee offset amendment substantially as proposed to permit registrants to reallocate previously paid filing fees between two or more classes of securities included on a registration statement, prior to effectiveness.[224] Specifically, the final amendment provides that, as proposed, in cases where a registrant has not relied on Rule 457(o) to calculate a required filing fee and wishes to increase the amount registered of one or more classes of securities on the registration statement and decrease the amount registered of one or more other classes on the same registration statement, the registrant may, in a pre-effective amendment, calculate the total filing fee due based on the then-current expected offering amounts, offering prices, and filing fee rates, and rely on Rule 457(b) to apply, as a credit against the current total filing fee due, the amounts previously paid in connection with the registration statement. In a change from the proposal, the final amendments extend the application of this offset procedure to where the registrant adds one or more new classes of securities at the same time it decreases the amount registered of one or more other classes on the same registration statement regardless of whether the registrant simultaneously increases the amount registered of one or more other classes on the same registration statement. The offset procedure will not, however, be available only to decrease or only to increase the amount of any class of registered securities, or only to add one or more classes of securities to the registration statement. We are extending the application because we see no reason to distinguish between increases involving already-registered and new classes.

Currently, registrants that rely on Rule 457(o) to calculate required filing fees need only pay a filing fee with any pre-effective amendment if there is an increase to the maximum aggregate offering price for all of the securities listed in the filing fee table combined. Rule 457(a), on the other hand, requires

[218] *See* letter from Angel.

[219] *See* letter from Angel.

[220] Filing fees paid by check constituted less than one percent of the number and dollar value of filing fee payments the Commission received during its fiscal years ended Sept. 30, 2019 and 2020.

[221] *See* letter from LaBerge.

[222] *See* letter from Wilson.

[223] *See* letter from LaBerge (citing our bank's inability to accommodate SWIFT as reason to provide the debit and credit card option). As also noted above, however, a debit or credit card must be issued by a U.S. financial institution.

[224] The final amendment is generally consistent with, but goes beyond, previous staff interpretive guidance on reallocating filing fees in connection with pre-effective amendments. *See* Securities Act Rules Compliance and Disclosure Interpretation (CDI) 640.01. The CDI provides that when a registrant has filed a registration statement for two separate securities and then wishes to increase the amount of one security and decrease the other, the registrant can file a pre-effective amendment to reflect such increase and decrease in the Calculation of Filing Fee Tables and reallocate the fees already paid under the registration statement between the two securities. The CDI represents the views of the staff of the Division of Corporation Finance. It is not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved its content. The CDI, like all staff guidance, has no legal force or effect: It does not alter or amend applicable law, and it creates no new or additional obligations for any person.

a registrant to pay an additional filing fee with any pre-effective amendment in which the registrant seeks to increase the amount of any class of securities to be offered or add one or more classes of securities to be offered, and prohibits refunds once a registration statement is filed. Accordingly, Rule 457(a) would require a registrant (i) increasing the amount of securities registered of one class or adding a class of securities to the registration statement; and (ii) decreasing the amount of securities registered of another class, to pay an additional filing fee based on any increased offering amount even though it may have effectively overpaid for the decreased offering amount of a registered second class. Rule 457(b), however, provides that a ''required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to . . . any applicable provision of this section.'' This provision allows registrants to offset filing fees paid with a class of securities where the offering amount has been reduced against additional filing fees due in connection with an increase in offering amount of another registered class or adding another class.

To aid in administering the rule and to simplify the process for registrants, we are adopting as proposed form instructions that will permit a registrant claiming such an offset to recalculate the filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement.[225] As filing fee calculations and tracking of available offsets can become complex depending on how many classes of securities are involved and how frequently the registrant changes the registered amount, we are requiring any registrant not relying on Rule 457(o) that seeks to offset filing fees based on concurrent (i) increases in one or more registered classes or additions of one or more classes; and (ii) decreases in one or more registered classes to recalculate the filing fee for the entire registration statement, including all registered classes, using the then-current offering amounts, price per unit and filing fee rates.

This filing fee offset procedure will be limited to situations where a registrant seeks to concurrently (i) increase the amount of one or more classes or add one or more classes; and (ii) decrease the amount of one or more other classes. It will not be available in situations where a registrant seeks only to decrease or only to increase the amount of any class of registered securities, or only to add a class of securities to the registration statement.

As proposed, we are limiting the availability of this instruction to registrants that have not previously calculated their required filing fee in reliance on Rule 457(o), as Rule 457(o) already provides registrants sufficient flexibility to pre-effectively reallocate the offering amounts of each registered and additional class without incurring additional filing fees.[226]

D. Technical and Other Clarifying Amendments

1. Proposed Amendments

Finally, the Commission proposed to make certain technical, conforming changes and other clarifying amendments. The Commission proposed amendments to

- consolidate filing fee-related instructions in the instructions to the filing fee tables;
- add text to instruction 4 of the proposed filing fee tables of Forms S–3 and S–4 to clarify that offerings made pursuant to General Instruction I.B.6 on Form S–3 and General Instruction I.B.5 on Form F–3 are eligible for universal shelf registration;
- revise Rule 0–11 to clarify and update it primarily with respect to superseded fee rates the rule references and the need to pay an additional filing fee if aggregate consideration is increased.

2. Comments on the Proposed Amendments

No commenter addressed the technical and other clarifying amendments.

3. Final Amendments

We are adopting the technical, conforming changes and other clarifying amendments as proposed except that we are making changes to conform to the final amendments' movement of filing fee-related information to exhibits and clarifying language.[227]

First, we are adopting amendments to consolidate filing fee-related instructions in the instructions to the filing fee tables as follows:

- Instructions 2.A.iii.b and c to the Calculation of Filing Fee Tables in Item 16(b) of Form S–3 will replace current General Instructions II.D and II.E, respectively;[228]
- Instructions 2.A.iii.b and c to the Calculation of Filing Fee Tables in Item 9(b) of Form F–3 will replace current General Instructions II.C and II.F, respectively;
- Instruction 2.A.iii.b to the Calculation of Filing Fee Tables in Item 21(d) of Form S–4 will replace current General Instruction J; and
- Instruction 2.A.iii.b to the Calculation of Filing Fee Tables in Item 21(d) of Form F–4 will replace current General Instruction D.3.[229]

In each case, the instruction to the filing fee table will be substantively equivalent to the General Instruction it will replace, except as described immediately below.[230]

Second, we are adopting amendments to clarify that offerings made pursuant to General Instruction I.B.6 on Form S–3 and General Instruction I.B.5 on Form F–3 are eligible for universal shelf registration.

For the reasons described in the Proposing Release, Form S–3 General Instruction I.B.6 is intended to operate in a manner similar to that of General Instruction I.B.1 regarding a registrant's eligibility to offer securities on a continuous or delayed basis pursuant to Rule 415(a)(1)(x)[231] and register two or

[225] The filing fee offset amendment will be reflected in Forms S–1, S–3, S–4, S–11, SF–1, SF–3, F–1, F–3, F–4, F–10, and N–14. *See, e.g.,* Instruction 2.A.iv to the Calculation of Filing Fee Tables in Item 16(c) of Form S–1.

[226] We remind registrants that if they originally pay a filing fee under Rule 457(a) and file an amendment that increases the amount of securities to be offered but not the maximum aggregate offering price, they can recalculate the filing fee under Rule 457(o), but they cannot get a refund if the amount of filing fees paid under Rule 457(a) exceeds that due under Rule 457(o).

[227] *See* Section II.A.1 regarding the movement of the filing fee information to exhibits.

[228] In a change from the proposal, we are conforming Form SF–3 to Form S–3 by replacing current General Instruction II.C of Form SF–3 with Instruction 2.A.iii.b to the Calculation of Filing Fee Tables in Item 14(b) of Form SF–3.

[229] In a change from the proposal, Instruction 2.A.iii.b to the Calculation of Filing Fee tables in Item 21(d) of Forms S–4 and F–4 will expressly provide that when a filer registers two or more classes of securities to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), Rule 457(o) permits the calculation of the registration fee to be based on the maximum aggregate offering price of all of the classes of securities listed in the filing fee table on a combined basis if the registrant is eligible to use Form S–3 or F–3, respectively, for a primary offering.

[230] Current General Instructions II.D and II.C of Forms S–3 and F–3, respectively, could apply to a well-known seasoned issuer regardless of whether it is filing an automatic shelf registration statement as long as it is not electing to defer payment of filing fees. Instruction 2.A.iii.b to the Calculation of Filing Fee Tables in Item 16(b) of Form S–3 and Item 9(b) of Form F–3 will so clarify.

[231] Offerings under Rule 415(a)(1)(x) are sometimes referred to as ''shelf offerings'' because securities can be offered (*i.e.,* taken down from the shelf) over time and from time to time. Such offerings typically involve the initial filing of a registration statement that goes effective with a base prospectus that provides certain general information and omits detailed information up to the extent permitted by §§ 230.430A and 230.430B (Rules 430A and 430B under the Securities Act). Rule 430A permits operating company registration

Continued

more classes of securities and specify the amount of each class offered and terms on an as-offered basis (*i.e.,* a universal shelf registration statement). To enable General Instruction I.B.6 to do so, we are adopting amendments to add references to General Instruction I.B.6 to Instruction 4 to the Calculation of Filing Fee tables in Item 16(b) of Form S–3 (as the successor to General Instruction II.D) and to Form S–3 General Instruction II.F. We are adopting analogous amendments to add references to General Instruction I.B.5 to Instruction 2.A.iii.b to the Calculation of Filing Fee Fables in Item 9(b) of Form F–3 (as the successor to General Instruction II.C) and to Form F–3 General Instruction II.G.

Third, as proposed, the amendments will revise Rule 0–11 to clarify and update it.[232] Questions have arisen from time to time about the interplay between paragraph (a)(2) of Rule 0–11, providing that ''[o]nly one fee per transaction is required to be paid,'' and paragraph (a)(3), providing that if, after an initial filing fee payment, the aggregate consideration offered is increased, an additional filing fee based on the increase is due. Some have misunderstood the ''one fee'' language to mean that no additional filing fee can be required under paragraph (a)(3) once an initial filing fee has been paid.[233] We are adopting amendments to clarify paragraph (a)(2) by removing the sentence containing the ''one fee'' language. The amendment would also have the effect of making paragraph (a)(2) consistent with Rule 457(b), which does not have the ''one fee'' language and is essentially the Securities Act filing fee rule analogue to paragraph (a)(2).[234]

To help avoid confusion and erroneous filing fee calculations, the amendments also will, as proposed, replace the superseded filing fee rates listed in Rule 0–11 with references to rates determined under Sections 13(e) and 14(g) of the Exchange Act,[235] which the Commission sets and announces yearly.[236] For the same reasons, the amendments also will add the term ''if the consideration does not consist entirely of cash'' to clarify which of two valuation measurements is required [237] and add the term ''as applicable'' where appropriate consistent with the fact that not all types of consideration referenced may be involved.[238]

Fourth, we are adopting certain technical and conforming changes and other clarifying amendments to Forms N–2 and N–14. In order to effect the move of the filing fee table and related instructions from the cover pages of Form N–2 and Form N–14 to the Exhibits item of each of these forms, we are adopting conforming changes to these forms' General Instructions. These conforming changes update cross-references.[239] They also delete legacy instructions regarding these forms' filing fee tables, as these instructions will be relocated to the forms' Exhibits item and amended for conformance with similar instructions in the Affected Securities Act and Exchange Act Forms, or are being eliminated from the amended forms, as discussed above.[240] We are also adopting conforming changes to the Exhibits item of Forms N–2 and N–14 to update internal references.[241] Finally, we are also making technical changes to Forms N–2 and N–14 to correct typographical errors, outdated citations, and grammatical and formatting errors.[242]

III. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these amendments as not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Economic Analysis

This section analyzes the expected economic effects of the amendments

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statements to initially omit certain information related to pricing and underwriting subject to meeting specified conditions including providing the information later through a form of prospectus filed under Rule 424(b) or in a post-effective amendment. Rule 430B permits operating company registration statements for offerings under Rule 415(a)(1)(x) that do not go effective automatically to initially omit information that is unknown or not reasonably available to the issuer subject to specified conditions including providing the information later through a prospectus filed under Rule 424(b), a post-effective amendment or, if permitted by the applicable form, a periodic or current report that is incorporated by reference. The registrant typically provides details of a particular offering (takedown) later in a prospectus filed under Rule 424(b), post-effective amendment or periodic or current report that is incorporated by reference.

[232] In a change from the proposal, the final amendments also will revise Rule 0–11 to conform it to the new requirements to place filing fee-related information in a filing fee exhibit. Current Rule 0–11(a)(5) requires fee-bearing documents filed under the Exchange Act to include their filing fee-related information on the cover. As amended, Rule 0–11(a)(5) will require that the filing fee-related information appear in a filing fee exhibit.

[233] The two provisions, however, operate in harmony and one does not nullify the other. The ''one fee'' language is followed in paragraph (a)(2) by language to the general effect that a required filing fee under Rule 0–11 is reduced by any filing fee paid in regard to the same transaction under the Securities Act or Exchange Act and any filing fee due under the Securities Act is reduced by any payment in regard to the transaction under the Exchange Act. The ''one fee'' language means that only one filing fee applies to a given transaction amount but portions of the total filing fee due may be assessed, depending on the facts and circumstances, on different but related filings. The language does not prevent an additional filing fee from being due to the extent of an increase in the aggregate consideration offered consistent with paragraph (a)(3). *See Filing Fees for Certain Proxy and Information Filings Tender Offers, Mergers and Similar Transactions,* Release No. 33–6617 (Jan. 9, 1986) [51 FR 2472 (Jan. 17, 1986)] (''Paragraph (a)(3) of Rule 0–11 provides that an increase in the aggregate consideration offered triggers an additional filing fee based upon the amount of the increased consideration. This additional fee is applicable whether the increased consideration is the result of an increase in the amount of securities sought or an increase in the per share consideration.'' (footnote omitted)).

[234] Similarly, we are amending Rule 13e–1(b) to clarify that the filer must pay the filing fee required by Rule 0–11 not only when it files the initial statement, but when it files an amendment for which an additional filing fee is due. Neither of these final amendments would affect a filer's ability to claim a filing fee offset based on earlier filing fee payments in connection with the same transaction.

[235] *See* Rule 0–11(b), (c)(1) and (2), and (d).

[236] *See e.g., Order Making Fiscal Year 2021 Annual Adjustments to Registration Fee Rates,* Release No. 33–10826 (Aug. 26, 2020) [85 FR 53890 (Aug. 31, 2020)]. As previously noted, each filing fee bearing document within the scope of the final amendments will include a new filing fee table instruction that will include a link to the current fee rate.

[237] *See* Rules 0–11(c)(1) and (d).

[238] *See* Rule 0–11(c)(2). In a change from the proposal, we are not adopting the proposed additions of ''aggregate of'', ''and'' and ''as applicable'' to Rules 0–11(c)(1) and (d) because those changes would have been inconsistent with the provisions' meaning.

[239] For example, we are removing now-obsolete cross-references to General Instructions II.D and II.E of Form S–3 in the Notes to General Instructions A.2 and B, respectively, of Form N–2. We are also revising General Instruction G of Form N–2 to add Item 25.2.s to the list of Items that funds need not include when filing a registration statement filed under only the Investment Company Act. We are also adding a reference to filing fee-related information in General Instruction J of Form N–2 to parallel changes in Form S–3.

[240] *See, e.g., supra* note 84. In addition, we are eliminating the sentence in General Instruction E.4 of current Form N–2 that describes the filing fee that is due when additional shares are registered on a combined registration statement pursuant to Rule 429 because all filing fee-related instructions in Form N–2 will move to new Item 25.2.s.

[241] We are revising the introductory paragraph to Item 25.2 of Form N–2 to add references to General Instructions C and I, and modifying the General Instructions to Item 25.2 to include a cross-reference to new paragraph 2.s., and to add references to General Instruction C. We are also modifying the introductory paragraph to Item 16 of Form N–14 to mirror the introductory language in Form N–2, as applicable, to provide consistency between the forms.

[242] *See, e.g.,* cover page instructions, General Instruction A.2, and Items 1, 3, 8, and 10 of Form N–2; cover page instructions; General Instructions A, C, D, E, F, G, and J, and Items 1, 3, 5, 6, 7, 12, 13, 14, 15, and 16 of Form N–14.

relative to the current baseline, which consists of the existing filing fee assessment and collection practices and the related regulatory framework and disclosure requirements. As discussed above, the current process by which filers submit—and the Commission reviews, verifies, and processes—filing fees is highly manual and labor-intensive. The amendments require that all information needed for filing fee calculation be disclosed in Inline XBRL.[243] This allows greater automation of the filing fee calculations and payment processes, thereby saving filer resources and facilitating the Commission's assessment and collection of filing fees.

In addition, we are updating filer payment options by adding ACH and debit and credit cards as new payment options and eliminating the paper check and money order options. The introduction of new payment options will be beneficial to filers because these electronic payment options are more efficient and accurate, with a decreased possibility of payment errors and faster settlement time than paper checks and money orders.

Finally, the amendments permit filers to reallocate previously paid filing fees across security classes in case they seek to concurrently (i) increase the amount of one or more classes or add one or more classes; and (ii) decrease the amount of one or more other classes in the same registration statement.[244] Specifically, the filers may calculate the total filing fee due based on the then-current expected offering amounts, offering prices, and filing fee rates and rely on Rule 457(b) to apply the previously paid filing fees against the total filing fee due. The amendment is generally consistent with, but expands on, previous staff interpretive guidance on reallocating filing fees in connection with pre-effective amendments. Filers are expected to benefit from the additional flexibility.

Following effectiveness, the impact of the amendments may be measurable by considering the number of fee-bearing filings that are received with errors, the number of fee-bearing filings that are paid with the new payment options, and the number of fee-bearing filings in which filers pre-effectively reallocate previously paid filing fees across security classes.

We are sensitive to the costs and benefits of these amendments. The discussion below addresses the potential economic effects of the amendments, including the likely benefits and costs, as well as the likely effects of the amendments on efficiency, competition, and capital formation. At the outset, we note that, where possible, we have attempted to quantify the benefits, costs, and effects on efficiency, competition, and capital formation expected to result from the amendments. In many cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reasonable estimate.

A. Economic Baseline

Our baseline includes the Commission's current filing fee assessment and collection practices and the regulatory framework and disclosure requirements pertaining to the fee-bearing filings. Our baseline also takes into account that some filers that will be subject to these amendments already structure other disclosures, as well as related industry practices involving structured disclosure. The main parties that are likely to be affected by the amendments include the filers of fee-bearing forms and their investors.

The Commission assesses and collects filing fees for certain corporate filings, including those related to registered securities offerings, tender offers, and merger or acquisition transactions. The Commission also assesses and collects filing fees for registered offerings by investment companies. The Commission staff manually reviews the filing fee information for every fee-bearing filing that is received by the Commission. Where there are discrepancies, the staff has to resolve the discrepancy and often has to contact the filer to do so. During the 2020 fiscal year, we estimate that approximately 610 fee-bearing filings (representing approximately 0.9% of all fee-bearing filings) contained filer errors requiring manual correction by Commission staff.[245] Common types of filing fee calculation errors involve improper use of offsets, improper use of carryforwards, improper reference to previously paid amounts, and incorrect rule references. When an error occurs, filers must expend additional effort to work with the staff to correct the errors.

Currently, a filer must deposit into its EDGAR account funds sufficient to cover the filing fee via wire transfer, checks, or money orders. Over 99% of the payments for filing fees are made via wire transfer. For wire transfer, check, and money order processing, Commission staff is unable to automatically verify, without a manual review, whether appropriate routing information is included to allow for posting payment to the correct filer account. As a result, we estimate that approximately 9% of payments received are initially suspended due to incomplete or inaccurate payment routing information.

The amendments affect filers of certain fee-bearing filings. Based on the analysis of EDGAR filings during calendar year 2020,[246] we estimate that there were 9,298 unique filers of fee-bearing filings subject to the amendments, including:

- 8,964 unique filers of at least one filing on a fee-bearing Form S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, F–10, N–2, or N–14 registration statement or related prospectus filed under Rule 424(b), or a statement filed under Rule 13e-1, all of which are filed exclusively by filers that either already are required to file other disclosures in Inline XBRL or will be required to file other disclosures in Inline XBRL under previously adopted Commission rules prior to the compliance dates for the amendments. For such filers to be required to file other disclosures in Inline XBRL, the filers must prepare their financial statements in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') or International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board (''IASB'').[247] We note, however,

[243] As discussed in detail above, in a change from the proposal, the amendments require filers to disclose all filing fee-related information in a separate fee exhibit that must be submitted in Inline XBRL rather than on the cover page. This change will streamline the presentation of filing fee-related information and potentially facilitate any future changes in the structured data language applied to it. *See supra* Section II.A.3.c.ii.

[244] As discussed in detail above, in a change from the proposal, the amendments extend the application of this offset procedure. Under the rule as adopted, an offset will be applicable to situations in which the registrant, on the same registration statement, adds one or more new classes of securities at the same time it decreases the amount registered of one or more other classes regardless of whether the registrant simultaneously increases the amount registered of one or more other classes on that registration statement.

[245] The Commission staff also performs an independent review of filing samples (approximately 5% of the filings received) semiannually to ensure the process is accurate and thorough. A small number of additional filing fee adjustments are identified in this process.

[246] This estimate considers unique filers based on CIK (including co-registrants). Each filer may make multiple fee-bearing filings. Filing amendments are excluded from these estimates.

[247] In April 2020, the Commission adopted Inline XBRL requirements for registered closed-end funds and BDCs that file on Form N–2, which must comply with the new tagging requirements on or prior to February 1, 2023. *See supra* Section II.A.5.c. Thus, filers of Forms N–2 and N–14 that are subject to the final rules, which include certain registered investment companies and business development companies, will be subject to an Inline

Continued

that there are two foreign issuers that prepare their financial statements in accordance with an accounting standard other than U.S. GAAP or IFRS as issued by the IASB and thus will not otherwise be subject to any XBRL requirements.

- 334 unique filers that did not file the forms listed in the previous paragraph but that filed at least one fee-bearing[248] Schedule 14A, 14C, TO, 13E–3, 13E–4F, or 14D–1F, of which an estimated 191 unique filers were subject to periodic reporting using Inline XBRL.[249]

Thus, we estimate that approximately 145 (1.6%) filers affected by the amendments will become newly subject to Inline XBRL requirements as a result of the amendments.[250]

B. Economic Impacts, Including Effects on Efficiency, Competition, and Capital Formation

The section discusses the anticipated economic benefits and costs, as well as the likely effects of the amendments on efficiency, competition, and capital formation.

1. Structuring Filing Fee-Related Information

The amendments require filing fee-related disclosures to be structured in Inline XBRL for the affected forms listed above. This includes information that today is included in the body of the filing and some information prepared by filers but the disclosure of which is currently optional.[251] As this information is already either required to be disclosed elsewhere in the filing, or must already be gathered to complete the filing fee calculation, we believe that any new cost for filers from this disclosure requirement will be minimal. For example, many of those items already are required in the header of the filing while some others are presently disclosed in a narrative format. Presenting most of this information substantially in a tabular format in the structured data exhibit will centralize filing fee disclosure and facilitate the structuring and use of filing fee data for fee calculation and validation purposes. The limited scope of the disclosure, even after the changes from the proposal to the tabular presentation of the information discussed in Section II.A above, is expected to preserve the anticipated low costs of the structured data exhibit, in line with the proposal, both in the aggregate and for the vast majority of filers.

The commenters that addressed the structuring provisions generally supported the proposed amendments.[252] These commenters discussed the expected benefits of the amendments in the form of improved efficiency and enhanced potential for automation in preparation, processing and review of filing fee-related filings,[253] as well as improved accuracy and disclosure,[254] with a potential reduction in suspensions of filings due to miscalculations.[255] Structuring filing fee-related data under the amendments will enable significantly greater automation and more accurate and comprehensive validation of filing fee calculations, which currently is manually performed. When structured filing fee-related information is received by EDGAR, the EDGAR system will be able, as part of its validation process, to determine automatically in many cases whether the filing fee calculations have been performed correctly. Filings using the optional fee tagging tool and test filings that do not pass specific validation tests will be flagged before the related live filing is filed, allowing filers to correct any filing fee calculation errors without needing to wait for Commission staff to verify the calculations manually, and subsequently revise an already-filed document and pay any additional filing fees owed due to an erroneous calculation.

Greater automation of filing fee calculation and the elimination of the need to duplicate the entry of filing fee information are expected to benefit filers and the Commission by making the filing process more efficient. Structuring filing fee-related information under the amendments will also enable the integration of such information into existing filing preparation software, and as a result, save time that would otherwise have been used to calculate filing fees.

In addition, filers are expected to benefit from the reduced likelihood of filing fee errors and the savings of time required to correct such errors. While in some situations, the effort required to address a filing fee adjustment is minor (*e.g.,* if additional funds need to be wired to the Commission), other situations might require a filer to submit a new or amended filing (*e.g.,* if the filer attempts to use a non-filing fee bearing filing to register the offer and sale of securities). Currently, filers may need to expend effort to update their internal records regarding total offsets used and total carryforwards registered and make changes to their securities registrations. Refiling a corrected version of a filing that has been filed with errors might require additional work by in-house counsel or filing agents. In contrast, under the amendments, such potential errors (such as calculation or tagging errors) will likely be identified through the prior submission of a test filing to EDGAR and so can be corrected prior to filing. While we expect these benefits will be realized by most filers, we recognize that the magnitude of these benefits might depend on the particular filer's current filing practices and error rates.

In addition, to the extent that investors, analysts, and other data users seek to make use of filing fee information in the affected forms, the requirement to structure the filing fee information in Inline XBRL may potentially yield benefits in making the filing fee data more readily available to such users in a manner that facilitates aggregation, comparison, and analysis. Such benefits to data users are expected to be modest because the scope of structured data requirements in these amendments is tailored to filing fee-related information.

Filers may incur costs to structure filing fee-related disclosures under the amendments.[256] Implementation costs for filers will vary as a function of their

XBRL requirement for other disclosures prior to the compliance date of the final rules. *Id.*

Filers of these registration statements that have yet to incur a periodic reporting obligation under Section 13(a) of the Exchange Act when they initially file will necessarily incur a periodic reporting obligation after the filing's effectiveness pursuant to Section 15(d) of the Exchange Act, and will subsequently be required to comply with the Inline XBRL structuring requirements set forth in Rule 405 of Regulation S–T and § 232.406 (Rule 406 of Regulation S–T). We recognize that, in some instances, a non-reporting filer will initially file one of these forms (and thus be required to structure filing fee-related information under the amendments), but the form may not always be declared effective. In such cases, the filer might not incur any other Inline XBRL structuring obligations.

[248] Of the multiple submission type variants of these schedules, only submission types PREM14A/PRER14A and PREM14C/PRER14C are fee-bearing and thus subject to the amendments.

[249] Reporting companies were identified based on the analysis of filings on Form 10–K, 10–Q, 20–F, or 40–F during the 2020 calendar year. Additionally, filers of Schedules 13E–3 and 13E–4F that are not themselves reporting companies must be affiliates of reporting companies. Presumably, such filers would benefit from their affiliates' experiences with Inline XBRL structuring.

[250] (334 − 191) + 2 = 145. 145 / 9,298 = 1.6%. *See supra* notes 246–249 and accompanying text.

[251] *See supra* note 30 regarding 457(f) information required for calculation of filing fee but not expressly required to be disclosed.

[252] *See* letters from Jones, Martinez, XBRL US, and XBRL US WG.

[253] *See* letters from Jones, XBRL US, and XBRL US WG.

[254] *See* letters from Jones and XBRL US.

[255] *See* letter from XBRL US.

[256] Software vendors and filing agents may pass through the costs of implementing technology changes to structure filing fee-related disclosures to filers.

current processes for preparing fee-bearing filings, as well as their internal processes and any software employed to prepare other filings required to be in Inline XBRL.

We recognize that the costs incurred to structure filing fee-related disclosures in Inline XBRL will vary across filers. For filings that already require some information to be structured in Inline XBRL,[257] requiring additional Inline XBRL data elements (some of which will no longer be required to be entered into the submission header) is straightforward and is not expected to result in a significant incremental cost for filers.[258] In other cases, while the affected filings themselves may not presently require Inline XBRL structuring, most or all filers of those affected filings already are or will otherwise become subject to Inline XBRL requirements and therefore will be able to leverage existing structuring processes, including software used for other filings, to structure filing fee-related information with relatively small incremental costs. Nevertheless, we recognize that such filers will incur some costs, particularly in the initial year of compliance, to meet the new requirements.

We requested comment on the costs of the proposed requirements. One commenter surveyed XBRL software vendors to provide an estimate of the additional preparation time required for filing fee tagging. The results of this survey suggest, consistent with our own analysis and conclusions, that the additional effort required to comply with the rule will be relatively small.[259] Based on that survey, that commenter concluded that ''preparing the fee tables in Inline XBRL is likely to result in additional preparation time for filers'' and that the surveyed vendors ''estimated that it could require an additional 30 minutes to two hours to prepare the first filing with XBRL-formatted fee information.'' According to the same commenter, ''eight out of nine [surveyed vendors] however, said that the extra time would decline with subsequent filings as issuers and vendors move up the learning curve. Four of the eight said the time spent would decline significantly; four said it would decline somewhat.'' [260] The commenter further stated that ''five out of nine [surveyed vendors] indicated that there would likely be a price increase in XBRL preparation for those companies that outsource their XBRL preparation, of between 5–10%. For those filers who prepare their own submission using a disclosure management tool, there may or may not be a modest price increase.'' [261]

Based on the analysis of EDGAR filings during calendar year 2020, we estimate that approximately 145 filers will be newly subject to Inline XBRL requirements solely as a result of the amendments and will therefore incur costs to develop processes and potentially license software or engage a third party to comply with the new requirements.[262] Such filers' incremental costs to comply with the requirements to tag filing fee-related information may be alleviated by a free filing fee-tagging tool that will be available on the Commission's website prior to the compliance dates.[263] The amendments include a phase-in period for complying with the requirements to tag filing fee-related information.[264] The compliance date schedule is expected to mitigate the rules' effects on smaller filers and filers not otherwise required to use Inline XBRL. This schedule will give such filers additional time to develop related expertise, as well as provide such filers with the opportunity to benefit from the experience of larger filers with the structuring requirements. Further, almost all operating companies that will be subject to Inline XBRL requirements pursuant to the amendments will be required to file financial statement and cover page information in Inline XBRL prior to the compliance date of the filing fee tagging requirements and thus will incur minimal incremental costs to comply with the filing fee tagging requirements under the compliance date schedule. Registered closed-end funds and BDCs subject to the amendments also will become subject to other Inline XBRL requirements prior to the compliance date of the filing fee tagging requirements and thus likely will incur minimal incremental costs to comply with the filing fee tagging requirements. Overall, the compliance schedule is expected to give a reasonable amount of time to implement Inline XBRL for tagging this limited subset of filing fee-related information.

As discussed above, the amendments will permit all filers to file their filing fee-related information in Inline XBRL prior to their respective compliance dates. Filers will be able to do so under the amendments once the EDGAR system has been modified to accept filing fee-related information in Inline XBRL for all fee-bearing documents subject to the amendments. This opportunity will benefit filers by giving filers and software vendors on which they rely additional time to implement software changes and gain experience related to tagging filing fee-related information in Inline XBRL.

In a change from the proposal, the amendments require filers to structure the filing fee-related information in a separate Inline XBRL exhibit document rather than on the cover page of the filing where it was proposed to be required. Compared to the proposal, streamlining presentation of filing fee-related information and consolidating it to a single, separate location within the submission may incrementally benefit some filers that seek to prepare and review the filing fee disclosure portion of the filing in a separate step from the preparation of the main filing. For filers that prepare and review the filing fee disclosure together with the main filing, the change is not expected to affect preparation cost. This change is expected to have a minimal effect on filers and vendors whose software will be used to comply with the amendments. Overall, we do not expect this change to affect the underlying

[257] For example, operating company filers are required to provide interactive data for financial statements and periodic and current report cover pages under Rules 405 and 406 of Regulation S–T, respectively.

[258] *See infra* Section V for a discussion of the estimated increase in paperwork burden as a result of the requirement to tag filing fee-related information. *See also* FAST Act Adopting Release, *supra* note 140, at 12711 (stating that the cover page tagging requirement will not result in significant additional burdens for registrants and estimating that the requirement to tag additional cover page items will impose an increased paperwork burden of one hour for each affected form).

[259] *See* letter from XBRL US. The information presented here does not distinguish the costs based on the filer's levels of prior Inline XBRL filing experience.

[260] *Id.*

[261] *Id.*

[262] *See supra* note 247 and accompanying text.

[263] This tool would allow filers to input their filing fee-related disclosures into a web-based graphical user interface, and would then generate an Inline XBRL-tagged filing fee exhibit based on the inputted disclosures.

[264] According to the schedule as adopted, (i) large accelerated filers, in a change from the proposal, must comply with the filing fee tagging requirements for filings submitted on or after 30 (rather than 18) months after the requirements' effectiveness; (ii) accelerated filers, in a change from the proposal, must comply with the filing fee tagging requirements for filings submitted on or after 42 (rather than 30) months following the requirements' effectiveness; and (iii) all other filers, including certain investment companies that file registration statements on Forms N–2 and N–14, must comply for filings submitted on or after 42 months after the requirements' effectiveness. Given the volume of forms that must be changed, the technical complexity of the required development, and the desire to allow filers to test the changes, structuring requirements would be phased in. Extending the phase-in period for large accelerated filers from 18 to 30 months, and for accelerated filers—from 30 to 42 months would allow filers additional time to complete any required technical and software development changes and test the changes over a longer period of time prior to full implementation, potentially easing the transition burden.

economic effects discussed above, including the costs and benefits of structuring the filing fee-related information in Inline XBRL.

We are adopting several minor technical changes from the proposal. In particular, as discussed above, the final rules will require more detailed tabular disclosure of certain information that, under the proposal, registrants would have presented in narrative format or in the header information for a filing. This is expected to facilitate filing fee determination, information presentation, capacity tracking, and structuring and EDGAR validation. As this information is already either required to be disclosed elsewhere in the filing, or must already be gathered to complete the filing fee calculation, any new cost for filers is expected to be minimal. In addition, we are adopting conforming changes to Forms N–2 and N–14.[265] Further, to account for recent amendments to Rule 424 and Forms S–1, S–3, F–1 and F–3, we are revising these and, as appropriate, other provisions to conform to the other filing fee disclosure and payment methods amendments. Finally, we are revising Forms SF–1 and SF–3, as well as Forms N–2 and N–14, to conform their filing fee content and presentation requirements, as applicable, to those of other fee-bearing forms we are amending. Consistent with extending the content and location requirements to Forms SF–1 and SF–3, we are permitting, but not requiring, the filers of these forms to structure the filing fee-related information to realize its benefits and are modifying the proposal to do so.[266] These technical and conforming amendments are expected to facilitate filing fee determination, information presentation, and capacity tracking. Because these additional content specifications do not add new substantive disclosure requirements, but instead clarify current requirements and provide additional information on how to satisfy their filing fee payment obligations, these amendments will involve minor changes to the disclosure of information that filers already must collect, and thus are not expected to have appreciable economic effects.

2. Updating Payment Options

The amendments will permit the use of ACH payments, providing filers with an additional option for the electronic deposit of funds. We expect that the introduction of the ACH option will be beneficial to filers and it was generally supported by commenters.[267] First, filers that presently use paper checks or money orders are likely to benefit from the availability of the ACH option. Compared to payments made by paper checks and money orders, ACH payments will reduce the need for manual re-routing of filing fee payments. Consistent with the observations of various commenters, we expect the ACH option to have the benefits of improved accuracy and reduced incidence of errors,[268] improved efficiency [269] and ability to schedule payments in advance,[270] and greater security [271] and reliability.[272] We are also eliminating the option to pay filing fees via paper checks and money orders. The elimination was supported by one commenter.[273] Commenters stated that the ACH option is already widely used by public companies in other settings.[274]

Although the vast majority of filers (over 99%) currently use wire transfers rather than checks or money orders to make filing fee payments, we recognize that eliminating checks and money orders as a payment option for filers that rely on them may impose an incremental cost on such filers. However, such a burden will be mitigated by the benefits from having an ACH option. As we noted in the Proposing Release, paying by ACH typically provides a convenient and low-cost alternative to such filers. Thus, most filers that currently use paper checks or money orders will be able to switch to ACH payments and likely will not experience an increase in cost from the elimination of paper checks and money orders.

Further, introducing the ACH payment option could also decrease costs and payment processing errors for filers that presently use wire transfer. Some of the filers that currently use wire transfer may do so because they prefer electronic payments, and a wire transfer is the sole permitted method. Some of these filers may prefer to use ACH after it becomes available (whether for cost savings or otherwise), and thus will benefit from the option to use ACH.

In addition, the ACH option may save filer resources through a reduction in payment posting errors, compared to the current options. An ACH payment will be submitted along with the filer's properly formatted CIK number to ensure that the deposit posts to the correct account. This will reduce the necessity for manual re-routing of filing fee payments by Commission staff, which currently must be done for approximately 9% of filing fee payments. Since an ACH transaction will reduce the risk of account payments not being posted promptly, filers may be able to spend fewer resources to check account payments.

In a change from the proposal, made in response to commenter suggestions,[275] we are also adding options to use a debit or credit card for payment. These options will provide additional flexibility for filers that may be unable to, or prefer not to, send an ACH or wire payment. For example, as one commenter indicated, such an option may be beneficial for those foreign issuers that are unable to send a wire payment.[276] We recognize that any associated fees charged by debit or credit card issuers will impose a cost on such filers. For the remainder of filers, because ACH and wire payments will also be available for payment of filing fees, we expect filers to choose the debit

[265] As discussed above, and in a change from the proposal, we are amending Forms N–2 and N–14 to require the same filing fee-related content and presentation requirements we are adopting for the Affected Securities Act and Exchange Act Forms and Schedules. *See supra,* note 50 and accompanying text. As with operating company filers, any new cost of these minor changes for registered closed-end funds and BDCs is expected to be minimal because they simply clarify how to satisfy current filing fee payment obligations. Moreover, the resulting greater consistency across affected forms may benefit those filers that are part of fund complexes that also offer products filed on the Affected Securities Act and Exchange Act Forms.

[266] We estimate that during calendar year 2020, there were 14 unique filers of at least one Form SF–1 or SF–3.

[267] *See, e.g.,* letters from Angel, Jones, LaBerge, Larson, Martinez, and NACHA.

[268] *See, e.g.,* letters from Jones, stating that ''modernizing the fee reporting and collecting system with the use of iXBRL and ACH will improve efficiency, accuracy, and disclosure''; and Martinez stating that ''[a]n automated system such as the ACH to help the preparation, disclosure, validation, assessment and collection process for fees and payments sounds like it will reduce manual errors and help the correction of said errors.''

[269] *See, e.g.,* letters from Jones; Larson, stating that ''the implementation of [ACH] payments allows for more efficient means of payment for most companies filing with the SEC''; and NACHA stating that ''[t]he proposed amendments will improve filing fee payment certainty, efficiency, and payment processing by facilitating lower-cost, easily routable payments through the ACH Network.''

[270] *See, e.g.,* letter from NACHA, stating that: ''[f]ilers can use the ACH instead to schedule payments at their convenience.''

[271] *See, e.g.,* letters from Jones, stating that ''ACH is more secure than money orders and checks and has been standard practice elsewhere for decades''; and NACHA, stating that ''[t]he ACH Network serves as a secure, reliable and ubiquitous network for consumer, business and government electronic payments.''

[272] *See, e.g.,* letter from NACHA.

[273] *See* letter from NACHA.

[274] *See, e.g.,* letters from Jones and NACHA.

[275] *See* letters from Angel, LaBerge, and Larson, stating that the Commission should, for a fee, accept debit and credit cards for filing fee payments and, thereby, provide an alternative for foreign issuers.

[276] *See* letter from LaBerge.

or credit card payment option only if it is more cost-effective or convenient.[277]

3. Fee Offset Amendments

The amendments will permit filers to reallocate previously paid filing fees across security classes if they seek to concurrently (i) increase the amount of securities of one or more classes or add one or more classes; and (ii) decrease the amount of one or more other classes in the same registration statement. Specifically, filers that have not relied on Rule 457(o) to calculate a required filing fee may calculate the total filing fee due based on the then-current expected offering amounts, offering prices, and filing fee rates and rely on Rule 457(b) to apply the previously paid filing fees against the total fee due. Currently, Rule 457(a), by its terms, requires filers seeking to (i) increase the amount of one class or add a class; and (ii) decrease the amount of another class to pay additional filing fees based on any increased offering amount for the first or additional class even though they may have overpaid for the decreased offering amount of a registered second class. Filers will benefit from the flexibility to reallocate previously paid filing fees across security classes.

As discussed above,[278] the fee offset amendment is consistent with but goes beyond existing staff guidance on pre-effective reallocation of previously paid filing fees across security classes. Thus, the economic effects of the provision are reduced to the extent that some filers may already follow the existing staff guidance. However, adopting rules on pre-effective reallocation will reduce any uncertainty some filers may have given the reallocation position's status as staff guidance.

The amendments also will require filers to disclose certain additional information when claiming a filing fee offset under Rule 457(p) (such as the amount of unsold securities or unsold aggregate offering amount associated with the prior registration statement and claimed offset). Because this information is already required to determine the filer's eligibility for the offset (and can otherwise be inferred from other public disclosures), we believe that any new cost for filers from this disclosure requirement will be minimal.

4. Anticipated Effects on Efficiency, Competition, and Capital Formation

Structuring filing fee-related information in Inline XBRL enables greater automation of filing fee calculation and verification. This is expected to result in a more efficient filing and payment process, saving filer resources and in turn benefiting their investors. In addition, by saving staff time and resources and increasing the accuracy of filing fee payments, the amendments also are expected to facilitate the Commission's review of the affected filings.

To the extent that the requirements under the amendments impose incremental costs on some filers, such filers might be at an incremental competitive disadvantage, and their investors could potentially be adversely affected. However, because the significant majority (over 98%) of filers subject to the amendments, including smaller filers, are or will already be subject to other Inline XBRL disclosure requirements prior to the compliance dates of the amendments, those filers will have already incurred costs to adopt Inline XBRL. Thus, we do not believe that the amendments will result in significant competitive effects on smaller filers or adverse effects on their investors.

Updating payment options to introduce ACH payments and debit and credit card transactions and eliminate paper checks and money orders could increase the efficiency of processing of filing fee-related payments and reduce the burden of tracking payments for filers.

Finally, providing flexibility in reallocating previously paid filing fees across classes of securities should increase efficiency and lower registration costs and could potentially encourage capital formation through registered offerings among eligible registrants.

C. Reasonable Alternatives

The amendments require certain filing fee-related information to be disclosed in Inline XBRL in most fee-bearing forms. Alternatively, we could have required the structuring of filing fee-related information for only a subset of filers or smaller subset of forms. Compared to the amendments, allowing filing fee-related information to be structured on a voluntary basis or for only a subset of filers or smaller subset of forms would lower costs for those filers that do not find structuring such information to be cost-efficient or who would not be subject to the amendments.

However, a voluntary program or one that captures only a subset of affected filers or smaller subset of forms would also reduce potential data accuracy and efficiency benefits compared to the mandatory use of structuring for affected fee-bearing filings. In particular, fewer filings would be validated electronically compared to a mandatory program, thereby likely increasing the incidence of errors in filing fee-related information and submitted payments and the time and cost for filers, as well as Commission staff, to manually check them.

We are requiring the use of Inline XBRL for filing fee-related information in all affected forms. As an alternative to Inline XBRL, we could specify that filing fee-related disclosures in all or some affected forms appear in XML or XBRL. With respect to XBRL, most filers who are or will otherwise be subject to Inline XBRL requirements prior to the compliance dates of the amendments have previously been subject to XBRL requirements and have therefore likely developed familiarity with structuring disclosures in XBRL. However, compared to XBRL, Inline XBRL is expected to reduce the time and effort associated with preparing filings and simplify the review process for filers.[279] Compared to the requirement to use Inline XBRL, the alternative of requiring filing fee-related information in all affected forms to be structured in an XML attachment could result in lower costs for the small subset of filers that do not presently use Inline XBRL for any disclosures. However, unlike under the amendments, these filers would be entering data twice: Once in a structured form, and once in the body of the disclosure. Moreover, as indicated by one commenter, the XML alternative ''would require the creation of additional structure to consistently handle the characteristics of the fee'' (already included within Inline XBRL) and such ''nonstandard XML schema developed by the [Commission] would add to the costs of data preparation, collection, and analysis for all stakeholders.'' [280] Given the importance of the accuracy of the filing fee-related information required to be structured

[277] However, those foreign filers that do not have a U.S. bank account and that experience issues with a wire transfer may have to rely on a U.S.-based credit or debit card payment even if it is a more costly method of payment. The letter from LaBerge discussing ACH-related challenges for some foreign filers states: ''ACH payments can be an [inconvenience] for foreign and non-US entities that don't have a US bank account. Even using an ACH payment, non-US entities will have complications when paying their filing and other fees, which could result in delays and other mistakes. For example, if the payment is not recognized as a domestic ACH transfer, the payment may be returned to the foreign entity causing bank fees as well as prolonging the timing of the payment to the SEC.''

[278] *See* Securities Act Rules Compliance and Disclosure Interpretation (CDI) 640.01 (2017).

[279] *See* Inline XBRL Release, *supra* note 13.

[280] *See* letter from XBRL US.

and its consistency throughout a filing, we believe the benefits from the use of Inline XBRL justify any potential incremental costs compared to XML for those filers. Incremental costs to comply with the requirements to tag filing fee-related information may be alleviated by the availability of a free filing fee-tagging tool, anticipated to be released prior to the compliance date, on the Commission's website.[281] Furthermore, for the significant majority of filers that are already required to use Inline XBRL to comply with other structured disclosure requirements, the alternative of requiring a different structured data language for structuring filing fee-related information could result in inefficiencies and costs.

The amendments require filers to structure filing fee-related information using Inline XBRL in most, but not all, fee-bearing filings. As an alternative, we could have required all filers making fee-bearing filings to structure filing fee-related information using Inline XBRL.[282] Among those, filers that are not, or would not be, otherwise required to file other disclosures in Inline XBRL would incur greater initial costs to adopt Inline XBRL. However, over time, such filers may realize greater efficiencies from filing in Inline XBRL. Because Inline XBRL is both machine-readable and human-readable, filers will have greater ease of reviewing the filing. They may more easily identify errors and submit a correct filing, rather than spend time after submission to reconcile and submit amendments and amended filing fees. In addition, filers may also realize efficiencies from automating some of their internal processes because Inline XBRL is machine-readable. In addition, to the extent that data users access filing fee information across all forms, or across some of the forms not filed in Inline XBRL, this alternative would yield greater benefits in making the filing fee data available to such users so that it can be instantly aggregated, compared, and analyzed. However, those fee-bearing filings that are outside the scope of the amendments are either filed relatively rarely or are filed by filers that may not otherwise be subject to Inline XBRL requirements and thus would incur relatively higher incremental costs under this alternative (*e.g.,* foreign government registration statements filed pursuant to Schedule B of the Securities Act).

As another alternative, we could narrow the scope of filings subject to the amendments to include only those fee-bearing filings which are filed exclusively by entities that are or will otherwise become subject to Inline XBRL requirements for other filings.[283] This alternative would further reduce aggregate filer costs associated with the amendments. However, given that the vast majority of filers subject to the amendments would already be subject to Inline XBRL requirements with respect to other disclosures, such aggregate cost savings are likely to be modest. In turn, this alternative also would somewhat limit the aggregate benefits for filers and other market participants that would result from the rule, compared to the amendments.

The amendments have a phased compliance schedule for the requirements to tag filing fee-related information. Compliance with the structuring requirements will be required beginning with filings submitted on or after 30 or 42 months after the requirements' effectiveness, respectively, for (i) large accelerated filers; and (ii) accelerated filers, investment companies that file registration statements on Forms N–2 and N–14, and all other filers. As an alternative, we could employ a single compliance date or either accelerate or postpone compliance for particular filer categories or form types. Compared to the compliance schedule in the amendments, accelerating (postponing) compliance would provide filers less (more) time to implement Inline XBRL for tagging filing fee-related information and accelerate (postpone) the benefits of tagging filing fee-related information for users of this data. In particular, accelerating the compliance date schedule to require the tagging of filing fee-related information before most filers of affected forms have been required to tag financial statement and cover page information in Inline XBRL might result in additional transition challenges for those filers.

We are adding the ACH, debit, and credit card options for filing fee payments and eliminating the paper check and money order payment options. As an alternative, we could add the new payment options but not eliminate the paper check payment option, as suggested by one commenter.[284] This alternative would provide additional flexibility to those issuers that presently rely on paper checks and are unable or unwilling to use a wire, ACH, debit, or credit card payment, compared to the amendments. The aggregate benefit of the alternative of retaining the paper check option is likely to be minimal, given the modest reliance on the paper check option among filers today, as well as the wide use of ACH in other contexts.[285]

V. Paperwork Reduction Act

A. Background

Certain provisions of our rules, schedules, and forms that will be affected by the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[286] The Commission published a notice requesting comment on revisions to these collections of information requirements in the Proposing Release and has submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[287] The hours and costs associated with preparing, filing, and sending the schedules and forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. The titles for the collections of information are:

1. Form S–1 (OMB Control No. 3235–0065);
2. Form S–3 (OMB Control No. 3235–0073);
3. Form S–4 (OMB Control No. 3235–0324);
4. Form S–8 (OMB Control No. 3235–0066);
5. Form S–11 (OMB Control No. 3235–0067);
6. Form F–1 (OMB Control No. 3235–0258);
7. Form F–3 (OMB Control No. 3235–0256);
8. Form F–4 (OMB Control No. 3235–0325);
9. Form F–10 (OMB Control No. 3235–0380);

[281] *See supra* note 263.

[282] Forms SF–1, SF–3, S–20, F–6, F–7, F–8, and F–80 under the Securities Act and foreign government registration statements filed pursuant to Schedule B of the Securities Act, as well as Form N–5, are fee-bearing filings that will not be subject to the amendments. *See supra* Section II.A.5. During calendar year 2020, we estimate that there were 113 unique filers of these forms and schedules (excluding amendments), of which 61 unique filers also filed other fee-bearing forms or schedules that would be affected by the amendments.

[283] The filings will be Form S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, F–10, N–2 and N–14 registration statements, post-effective amendments and prospectuses filed pursuant to Rule 424(b), and statements filed under Rule 13e–1.

[284] *See* letter from Wilson.

[285] *See* letters from Jones and NACHA.

[286] 44 U.S.C. 3501 *et seq.*

[287] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

10. Form SF–1 (OMB Control No. 3235–0707);
11. Form SF–3 (OMB Control No. 3235–0690);
12. Schedule 13E–3 (OMB Control No. 3235–0007);
13. Schedule 13E–4F (OMB Control No. 3235–0375);
14. Schedule 14A (OMB Control No. 3235–0059);
15. Schedule 14C (OMB Control No. 3235–0057);
16. Schedule TO (OMB Control No. 3235–0515);
17. Schedule 14D–1F (OMB Control No. 3235–0376);
18. Rule 13e–1 (OMB Control No. 3235–0305);
19. Investment Company Interactive Data (for Forms N–2 and N–14) (OMB No. 3235–0642); [288]
20. Form N–2 (OMB 3235–0026); and
21. Form N–14 (OMB 3235–0336).[289]

The forms, schedules, rule and regulations listed above were adopted under the Securities Act, the Exchange Act, and/or the Investment Company Act. They set forth disclosure requirements related to registration statements, periodic reports, going private transactions, tender offers and proxy and information statements filed to help investors make informed investment and voting decisions.

The Investment Company Interactive Data collection of information references current requirements for certain registered investment companies and BDCs to submit to the Commission in Inline XBRL certain information provided in response to specified form and rule requirements included in their registration statements, post-effective amendments thereto, prospectuses filed pursuant to Rule 424(b) and § 230.497(c) or (e) (Rule 497(c) or (e) under the Securities Act), Exchange Act reports that are incorporated by reference into a registration statement, and for BDCs, their financial statements.[290] The final amendments will include new filing fee-related disclosure requirements along with corresponding structured data requirements for (non-interval) registered closed-end funds and BDCs as set forth in the General Instructions to Forms N–2 and Form N–14, and required by the amendments to Regulation S–T.[291] Consistent with prior practice, we are separately reflecting the hour and cost burdens for fund data tagging requirements in the burden estimate for Investment Company Interactive Data, not in the estimates for Forms N–2 and Form N–14. Relatedly, we separately address the Form N–2 and Form N–14 collections of information with regard to the compliance burdens estimated to result from the related disclosure requirements we are adopting. We did not address these collections of information in the Proposing Release because the related disclosure amendments we proposed would not have impacted the compliance burdens. As noted below, however, we estimate that the adopted disclosure requirements will result in 0.25 hour net increase in compliance burden, the same burden as for the Affected Securities Act and Exchange Act Forms and Schedules, as well as Forms SF–1 and SF–3.

A description of the final amendments, including the need for the information and its intended use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the amendments can be found in Section IV above.

B. Summary of Comment Letters and the Amendments' Effects on the Collections of Information

The Commission received one comment letter related to the PRA estimates in the Proposing Release. The commenter provided the results of a survey it conducted of nine XBRL preparation vendors regarding some of the questions raised in the Proposing Release.[292] The vendors estimated that the structuring of fee-related information would result in 30 minutes to two hours of additional preparation time for the first filing containing this information, but indicated that the time would decline with subsequent filings.[293] Five of the nine vendors also responded that a price increase of 5–10% could occur as a result of the requirement to structure filing fee information for registrants that outsource XBRL preparation, and that registrants who structure their own submissions using a disclosure management tool may or may not realize a modest price increase. These burden estimates are consistent with the one-hour burden increase per form for structuring data that was included in the Proposing Release, so we made no changes based on these comments.

The following table summarizes the estimated burden change of the amendments on the paperwork burdens associated with the affected forms listed above.[294]

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN CHANGES DUE TO THE AMENDMENTS

Amendments	Affected forms, schedules, and documents	Estimated burden change
Disclosure of Fee-Related Information: • Moving the filing fee-related information to a separate exhibit document rather than requiring it on the cover and making conforming changes in regard to the Affected Securities Act and Exchange Act Forms and Schedules, as well as Forms SF–1, SF–3, N–2 and N–14.	• Forms S–1, S–3, S–8, S–11, S–4, F–1, F–3, F–4, F–10, SF–1, SF–3, N–2, and N–14. • Schedules 13E–3, 13E–4F, 14A, 14C, TO and 14D–1F.	• 0.25 hour net increase in compliance burden.

[288] In 2020, the Commission issued a release that, among other things, retitled this collection of information (previously, ''Mutual Fund Interactive Data'') as ''Investment Company Interactive Data.'' *See* Variable Contract Summary Prospectus Adopting Release, *supra* note 13.

[289] We are amending Form 24F–2 to eliminate the substance of current Item 9, which duplicates information required in the form header, and renumber current Item 10 as Item 9. We view this as a technical change that will eliminate some minor duplication and streamline the form, but have no impact on filer burdens. Accordingly, we are not revising the PRA estimates for Form 24F–2.

[290] *See* Interactive Data for Mutual Fund Risk/Return Summary, Investment Company Act Release No. 28617 (Feb. 11, 2009) [74 FR 7748 (Feb. 19, 2009)] (requiring Form N–1A prospectus risk/return summary information to be submitted in XBRL); Inline XBRL Release, *supra* note 13 (requiring Form N–1A prospectus risk/return summary information to be submitted in Inline XBRL); Variable Contract Summary Prospectus Adopting Release, *supra* note 13 (requiring specified Form N–3, N–4, and N–6 prospectus items to be submitted in Inline XBRL); and Closed-End Fund Offering Reform Adopting Release, *supra* note 2 (requiring Form N–2 cover page information and specified Form N–2 prospectus items, as well as financial statement information (for BDCs only) to be submitted in Inline XBRL).

[291] 17 CFR 232.10 through 232.501 [OMB Control No. 3235–0424] (which specifies the requirements that govern the electronic submission of documents). We are adopting new Rule 408 of Regulation S–T, which requires the filing fee exhibits for specified fee-bearing forms, including Forms N–2 and N–14, to be submitted in Inline XBRL.

[292] Letter from XBRL US.

[293] Four of the vendors estimated that the costs would decline significantly after the first filing. Four other vendors estimated that the costs would decline somewhat after the first filing.

[294] We believe the payment method option and fee offset changes discussed above would not affect the paperwork burdens associated with these forms.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN CHANGES DUE TO THE AMENDMENTS—Continued

Amendments	Affected forms, schedules, and documents	Estimated burden change
• Adding new rows and columns to the filing fee tables of the Affected Securities Act and Exchange Act Forms and Schedules, as well as to Forms SF–1, SF–3, N–2 and N–14. • Adding or revising instructions regarding presentation, calculations and related disclosure in general and, in particular, associated with Rule 415(a)(6), Rule 424(g), Rule 429, Rule 457(a), (b), (f), (h), (o), (p), (r), (s), and (u), and Rule 0–11(a)(2), as applicable, in regard to the Affected Securities Act and Exchange Act Forms and Schedules as well as Forms SF–1, SF–3, N–2, and N–14, as applicable.		
• Adding an exhibit-based fee table and related instructions to Rule 13e–1 to conform its requirements to those for the Affected Securities Act and Exchange Act Forms to the extent applicable.	• Documents filed under Rule 13e–1 ...	• 0.25 hour net increase in compliance burden.
Structuring of Fee-Related Information:		
• Require structuring, in Inline XBRL, of all the fee-related information that will be required in the filing fee exhibit of the Affected Securities Act and Exchange Act Forms and Schedules, documents filed under Rule 13e–1. The structured information will include each fee table in the filing fee exhibit, together with a related explanatory section.	• Forms S–1, S–3, S–8, S–11, S–4, F–1, F–3, F–4, and F–10. • Schedules 13E–3, 13E–4F, 14A, 14C, TO and 14D–1F. • Documents filed under Rule 13e–1 ...	• 1 hour net increase in compliance burden per form/schedule.
• Require structuring, in Inline XBRL, of all of the filing fee-related information that will be required in the filing fee exhibit of Forms N–2 and N–14.	• Forms N–2 and N–14	• 1 hour net increase in compliance burden per form (as reflected in the hour and cost burden estimate for Investment Company Interactive Data).

C. Incremental and Aggregate Burden and Cost Estimates for the Amendments

Below we estimate the incremental change in internal burden and outside professional cost as a result of the amendments. These estimates represent the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the nature of their business. We do not believe that the amendments will change the frequency of responses to the existing collections of information; rather, we estimate that the amendments will change only the burden per response.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review the disclosures required under the amendments. For purposes of the PRA, the burden is allocated between internal burden hours and outside professional costs. The table below sets forth the percentage estimates the Commission typically uses for the burden allocation for each form. We also estimate that the average cost of retaining an outside professional is $400 per hour.[295]

PRA TABLE 2—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED FORMS AND SCHEDULES

Form/schedule/other	Internal (%)	Outside professionals (%)
Schedules 14A and 14C	75	25
Forms S–1, S–3, S–11, S–4, F–1, F–3, F–4, F–10, SF–1, SF–3, N–2, and N–14	25	75
Schedule 13E–3		
Rule 13e–1		
Investment Company Interactive Data		
Form S–8 and Schedule TO	50	50
Schedules 13E–4F and 14D–1F	100	

The tables below illustrate the estimated incremental change to the total annual compliance burden of the affected forms, in hours and in costs, as a result of the amendments.

[295] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms, and other entities that regularly assist registrants in preparing and filing documents with the Commission.

PRA TABLE 3—CALCULATION OF THE INCREMENTAL CHANGE IN ANNUAL BURDEN ESTIMATES OF AFFECTED RESPONSES RESULTING FROM THE AMENDMENTS

Form	Estimated number of affected responses (A)	Estimated incremental burden hours/ form (B)	Total incremental burden hours (C) = (A) × (B)	Estimated internal burden hours (D) = (C) × (Allocation %)	Estimated outside professional hours (E) = (C) × (Allocation %)	Estimated outside professional costs/affected responses (F) = (E) × $400
S–1	894	1.25	1,119	280	839	$335,600
S–3	1,647	1.25	2,059	515	1,544	617,600
S–4	551	1.25	689	172	517	206,800
S–8	2,140	1.25	2,675	1,338	1,337	534,800
S–11	64	1.25	80	20	60	24,000
F–1	63	1.25	79	20	59	23,600
F–3	112	1.25	140	35	105	42,000
F–4	39	1.25	49	12	37	14,800
F–10	77	1.25	96	24	72	28,800
SF–1	6	.25	2	1	1	400
SF–3	71	.25	18	5	13	5,200
Sch. 14A	362	1.25	453	340	113	45,200
Sch. 14C	78	1.25	98	74	24	9,600
Sch. 13E–3	77	1.25	96	24	72	28,800
Sch. 13E–4F	3	1.25	4	4	0	0
Sch. TO	1,378	1.25	1,723	862	861	344,400
Sch. 14D–1F	2	1.25	3	3	0	0
Rule 13e–1	10	1.25	13	3	10	4,000
N–2	275	.25	69	17	52	20,625
N–14	54	.25	14	3	10	4,050
IC Interactive Data	329	1.0	329	82	247	98,700
Totals	.....	.....	.....	3,834	5,973	2,388,975

PRA TABLE 4—REQUESTED PAPERWORK BURDEN UNDER THE AMENDMENTS

Form/collection	Current burden			Program change			Requested change in burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses or new responses (D)	Increase in company hours (E)[1]	Increase in professional costs (F)[2]	Annual responses (G) = (A) or (for IC Interactive Data) (A) + (D)	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
S–1	894	146,067	$78,922,043	894	280	$335,600	894	146,347	$179,257,643
S–3	1,647	192,460	234,775,580	1,647	515	617,600	1,647	192,975	235,393,100
S–4	551	563,216	678,291,204	551	172	206,800	551	563,388	678,498,004
S–8	2,140	28,890	11,556,000	2,140	1,338	534,800	2,140	30,228	12,090,800
S–11	64	12,290	15,016,968	64	20	24,000	64	12,310	15,040,968
F–1	63	26,815	32,445,300	63	20	23,600	63	26,835	32,468,900
F–3	112	4,448	5,712,000	112	35	42,000	112	4,483	5,754,000
F–4	39	14,076	17,106,000	39	12	14,800	39	14,088	17,120,800
F–10	77	558	669,900	77	24	28,800	77	582	698,700
SF–1	6	2,076	2,491,200	6	1	400	6	2,077	2,491,600
SF–3	71	24,552	29,463,225	71	5	5200	71	24,557	29,468,425
Sch. 14A	5,586	551,101	73,480,012	362	340	45,200	5,586	551,441	73,525,212
Sch. 14C	569	56,356	7,514,944	78	74	9,600	569	56,430	7,524,544
Sch. 13E–3	77	2,646	3,174,248	77	24	28,800	77	2,670	3,203,048
Sch. 13E–4F	3	6	0	3	4	0	3	10	0
Sch. TO	1,378	29,972	17,988,600	1,378	862	344,400	1,378	30,834	12,333,000
Sch. 14D–1F	2	4	0	2	3	0	2	7	0
Rule 13e–1	10	25	30,000	10	3	4,000	10	28	34,000
N–2	298	94,350	6,269,752	275	17	20,625	298	94,367	6,290,377
N–14	253	125,260	5,842,000	54	3	4,050	253	125,263	5,846,050
IC Interactive Data	19,817	252,602	15,350,750	54	82	98,700	19,871	252,684	15,449,450

[1] From Column (D) in PRA Table 3.
[2] From Column (F) in PRA Table 3.

VI. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [296] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act,[297] to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Act Analysis (''FRFA'') in accordance with Section 604 of the RFA.[298] An initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release. This FRFA relates to the amendments to the rules and forms described in Section II above.

A. Need for, and Objectives of, the Final Amendments

The purpose of the amendments is to improve the accuracy and efficiency and reduce the costs and burdens of filing fee preparation, payments, and processing. The amendments will modernize and simplify filing fee disclosure and the fee payment process for most fee-bearing forms, schedules, and reports filed with the Commission. For example, the amendments add ACH and debit and credit card options for filing fee payments and require filers to structure filing fee information in Inline XBRL. Finally, the amendments enable certain registrants to reallocate fees previously paid in connection with the same registration statement.

The need for and objectives of, the amendments are discussed in more detail in Section II above. We discuss the economic impact, including the estimated compliance costs and burdens, of the amendments in Sections IV and V above.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on all aspects of the IRFA, including how the proposed amendments could further lower the burden on small entities, the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the proposed amendments. In response, one commenter provided the results of a survey it conducted of nine XBRL preparation vendors regarding some of the questions raised in the Proposing Release.[299] The commenter indicated that the vendors were split on the value of a phase-in period for smaller reporting companies. Those not in favor of a phase-in period noted that the tagging of filing fee information will be trivial compared to the tagging of financial statement information, and that having all companies comply with the new filing submission process at the same time would reduce confusion among issuers, vendors, and data users. The other vendors favoring a phase-in period cited the more limited resources available to smaller issuers.

C. Small Entities Subject to the Final Amendments

The final amendments will affect registrants that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [300] For purposes of the RFA, under our rules, an issuer, other than an investment company or an investment adviser, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[301] An investment company, including a BDC, is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[302] We estimate that there are 976 issuers that file with the Commission, other than investment companies or BDCs, that may be considered small entities and are potentially subject to the amendments.[303] We estimate that there are 2 investment companies that make filings with the Commission on Forms N–2 and N–14 that may be considered small entities and are potentially subject to the amendments.[304]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

We expect the amendments to have a small incremental effect on existing reporting, recordkeeping and other compliance burdens for all issuers, including small entities. Many of the amendments would simplify and streamline existing disclosure requirements and payment alternatives in ways that should reduce compliance burdens. Some of the amendments, like those that would require the structuring of filing fee disclosures and related information,[305] will increase compliance costs for registrants, although we do not expect these additional costs to be significant. Compliance with certain provisions affected by the amendments will require the use of professional skills, including accounting, legal, and technical skills. The final amendments are discussed in detail in Sections I and II above. We discuss the economic effect, including the estimated costs and burdens, of the final amendments on all registrants, including small entities, in Section IV above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. Accordingly, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements for small entities under our rules as revised by the amendments;
- Using performance rather than design standards; and
- Exempting small entities from coverage of all or part of the amendments.

We believe the amendments will clarify, consolidate and simplify compliance and reporting requirements for small entities and other registrants. As discussed above, the amendments will modernize and streamline the filing fee payment process and filing fee disclosures by requiring more complete disclosure of filing fee-related information and requiring the filing fee information to be presented in a

[296] 5 U.S.C. 601 *et seq.*

[297] 5 U.S.C. 553.

[298] 5 U.S.C. 604.

[299] Letter from XBRL US.

[300] 5 U.S.C. 601(6).

[301] *See* §§ 230.157 (Securities Act Rule 157) and 240.0–10(a) (Exchange Act Rule 0–10(a)).

[302] *See* § 270.0–10(a) (Investment Company Act Rule 0–10(a)).

[303] This estimate is based on staff analysis of issuers, excluding co-registrants, subsidiaries, or ABS issuers, with EDGAR filings of Form 10–K, 20–F, and 40–F, or amendments to these forms, filed during the calendar year of January 1, 2020, to December 31, 2020 or filed by September 1, 2021 that, if timely filed by the applicable deadline, would have been filed between January 1 and December 31, 2020. Analysis is based on data from XBRL filings, Compustat, and Ives Group Audit Analytics and manual review of filings submitted to the Commission.

[304] This estimate is based on staff analysis of registered closed-end funds and BDCs (that are not interval funds) that were active as of December 31, 2020 and file on Form N–2. An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10(a) (Investment Company Act Rule 0–10(a)).

[305] *See, e.g., supra* Section II.A.4.

structured format. The amendments should make it easier to validate filing fee calculation and payments made by small entities and other registrants.

We do not believe that the amendments impose any significant new compliance obligations on small entities or other registrants. Most registrants that file the affected forms will have experience structuring information in Inline XBRL format. Registrants that file Forms S–1, S–3, S–4, S–8, S–11, F–1, F–3, F–4, F–10, N–2, and N–14 generally are or will, as a result of the phase-in of the Inline XBRL requirements or, in some cases, the need to file Exchange Act periodic and current reports, be required to file their financial statements in Inline XBRL format. Annual reports on Forms 10–K, 20–F, and 40–F, quarterly reports on Form 10–Q, current reports on Form 8–K, and reports on Form 6–K under the Exchange Act are subject to financial statement Inline XBRL requirements.[306] In addition, we recently adopted rule and form amendments that will, over a period of time, require registrants to structure information on the cover page of Forms 10–K, 10–Q, 8–K, 20–F, and 40–F using Inline XBRL.[307] We are adopting a transition period for the fee-related information structuring requirements under the amendments for all registrants. Small entities would be in the last group phased in under the transition, and it would occur after they already have experience with the financial statement and cover page Inline XBRL structuring requirements. Accordingly, we do not believe it is necessary to establish different compliance and reporting requirements or timetables, beyond their transition period treatment, or to exempt small entities from all or part of the amendments.

All investment company small entities filing Forms N–2, and those that will be required to provide the filing fee exhibit required by Form N–14, will have experience structuring Commission documents in Inline XBRL. We do not expect those investment companies to incur any significant new transition costs associated with preparing and reviewing their initial Inline XBRL submissions. We therefore do not believe it is necessary to establish different compliance and reporting requirements or timetables or to exempt investment company small entities from all or part of the final amendments.

Finally, with respect to using performance rather than design standards, the amendments generally use design rather than performance standards in order to promote uniform filing fee payment and disclosure requirements for all registrants. In some instances, the amendments would modernize and simplify existing design standards. For example, the proposed amendments would add ACH and debit and credit cards as new filing fee payment options and eliminate paper check and money order payment options. While the use of ACH and debit or credit cards are design standards, under the amendments, they would be options that are available, not a mandatory format. The filer still would have the flexibility to use another option (wire transfer).

VII. Statutory Authority

The amendments contained in this document are being adopted under the authority set forth in Sections 7, 10, and, 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a), and 35A of the Exchange Act and Sections 8, 24, 30, and 38 of the Investment Company Act.

List of Subjects in 17 CFR Parts 202, 229, 230, 232, 239, 240, 270, and 274

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Text of Final Rule and Form Amendments

In accordance with the foregoing, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The general authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 77sss, 77uuu, 78d–1, 78u, 78w, 78*ll*(d), 80a–37, 80a–41, 80b–9, 80b–11, 7201 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Effective May 31, 2022, amend § 202.3a by:

■ a. Revising paragraphs (a), (b) introductory text, (b)(1) introductory text, (b)(1)(i)(A), (b)(1)(ii), and (b)(2);

■ b. Designating the note to paragraph (b) as note 1 to paragraph (b) and revising the newly designated note;

■ c. Adding note 2 to paragraph (b); and

■ d. Revising the first sentence of paragraph (d).

The revisions and addition read as follows:

§ 202.3a Instructions for filing fees.

(a) *General instructions for remittance of filing fees.* Payment of filing fees specified by the following sections shall be made according to the directions listed in this section: §§ 230.111, 240.0–9, and 270.0–8 of this chapter. All such fees are to be paid through the U.S. Treasury designated lockbox depository or system and may be paid by wire transfer, debit card, or credit card or via the Automated Clearing House Network (''ACH'') pursuant to the specific instructions set forth in paragraph (b) of this section. Checks will not be accepted for payment of fees. To ensure proper posting, all filers must include their Commission-assigned Central Index Key (CIK) number (also known as the Commission-assigned registrant or payor account number) on fee payments. If a third party submits a fee payment, the fee payment must specify the account number to which the fee is to be applied.

(b) *Instructions for payment of filing fees.* Except as provided in paragraph (c) of this section, these instructions provide direction for remitting fees specified in paragraph (a) of this section. You may contact the Filing Fees Branch in the Office of Financial Management at (202) 551–8900 or go to *https://www.sec.gov/paymentoptions* for additional information if you have questions.

(1) *Instructions for payment of fees by wire transfer (FEDWIRE).* U.S. Bank, N.A. in St. Louis, Missouri, is the U.S. Treasury designated financial agent for Commission filing fee payments. The hours of operation at U.S. Bank for wire transfers are each day, except Saturdays, Sundays, and Federal holidays, 8:30 a.m. to 6:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect. Any bank or wire transfer service may initiate wire transfers of filing fee payments through the FEDWIRE system to U.S. Bank. A filing entity does not need to establish an account at U.S. Bank in order to remit filing fee payments.

(i) * * *

(A) The Commission's account number at U.S. Bank (850000001001); and

* * * * *

(ii) You may refer to the examples found on the Commission's website at *https://www.sec.gov/paymentoptions* for the proper format.

(2) *Instructions for payment of fees by debit card or credit card or via the Automated Clearing House Network (ACH).* To remit a filing fee payment by debit card or credit card or via ACH,

[306] *See supra* note 139 discussing tagging requirements applicable to Securities Act and Exchange Act forms.

[307] *See* FAST Act Release, *supra* note 140.

please go to the Commission's EDGAR system.

Note 1 to paragraph(b): Wire transfers and debit card, credit card, and ACH payments are not instantaneous. The time required to process a wire transfer through the FEDWIRE system, from origination to receipt by U.S. Bank, varies substantially. Debit card and credit card payments generally are expected to become available to the Commission the next day. ACH payments generally are expected to become available to the Commission within one to three business days. Specified filings, such as registration statements pursuant to section 6(b) of the Securities Act of 1933 that provide for the registration of securities and mandate the receipt of the appropriate fee payment upon filing, and transactional filings pursuant to the Securities Exchange Act of 1934, such as many proxy statements involving extraordinary business transactions, will not be accepted if sufficient funds have not been received by the Commission at the time of filing.

Note 2 to paragraph (b): You should obtain the reference number of the wire transfer from your bank or wire transfer service. Having this number can greatly facilitate tracing the funds if any problems occur. If a wire transfer of filing fees does not contain the required information in the proper format, the Commission may not be able to identify the payor and the acceptance of filings may be delayed. To ensure proper credit, you must provide all required information to the sending bank or wire transfer service. Commission data must be inserted in the proper fields. The most critical data are the Commission's account number at U.S. Bank and the payor CIK, the Commission-assigned account number identified as the CIK number.

* * * * *

(d) *Filing fee accounts.* A filing fee account is maintained for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the U.S. Treasury designated depository or system in anticipation of paying a filing fee. * * * * * * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78ll, 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 4. Amend § 229.601 by:

■ a. In the exhibit table in paragraph (a), adding an entry for ''(107)'' in numerical order; and

■ b. Adding paragraph (b)(107).

The additions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

	Securities Act Forms										Exchange Act Forms					
	S-1	S-3	SF-1	SF-3	S-4[1]	S-8	S-11	F-1	F-3	F-4[1]	10	8-K[2]	10-D	10-Q	10-K	ABS-EE
* * * * * * *																
(107) Filing Fee Table	X	X	X	X	X	X	X	X	X	X						

[1]An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Form S-3 or F-3; and (2) the form, the level of which has been elected under Form S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

[2]A Form 8-K exhibit is required only if relevant to the subject matter reported on the Form 8-K report. For example, if the Form 8-K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

* * * * *

(b) * * *

(107) *Filing fee table.* The filing fee table and related disclosure required by Item 16.(c) of Form S–1 (§ 239.11 of this chapter), Item 16.(b) of Form S–3 (§ 239.13 of this chapter), Item 8.(b) of Form S–8 (§ 239.16b of this chapter), Item 36.(c) of Form S–11 (§ 239.18 of this chapter), Item 21.(d) of Form S–4 (§ 239.25 of this chapter), Item 8.c of Form F–1 (§ 239.31 of this chapter), Item 9.(b) of Form F–3 (§ 239.33 of this chapter), Item 21.(d) of Form F–4 (§ 239.34 of this chapter), Item 14.(b) of

Form SF–1 (§ 239.44 of this chapter), and Item 14.(b) of Form SF–3 (§ 239.45 of this chapter). This exhibit must be submitted as required by § 232.408 of this chapter (Rule 408 of Regulation S–T), provided, however, that if the exhibit is submitted pursuant to Item 14(b) of Form SF–1 (§ 239.44 of this chapter) or Item 14(b) of Form SF–3 (§ 239.45 of this chapter), it is permitted but not required to be submitted as otherwise required by Rule 408.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 5. The general authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 6. Effective May 31, 2022, revise § 230.111 to read as follows:

§ 230.111 Payment of filing fees.

All payments of filing fees for registration statements under the Act shall be made by wire transfer, debit card, or credit card or via the Automated Clearing House Network. There will be no refunds. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

■ 7. Amend § 230.415 by revising paragraph (a)(6) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(6) Prior to the end of the three-year period described in paragraph (a)(5) of this section, an issuer may file a new registration statement covering securities described in such paragraph (a)(5) of this section, which may, if permitted, be an automatic shelf registration statement. The new registration statement and prospectus included therein must include all the information that would be required at that time in a prospectus relating to all offering(s) that it covers. Prior to the effective date of the new registration statement (including at the time of filing in the case of an automatic shelf registration statement), the issuer may include on such new registration statement any unsold securities covered by the earlier registration statement by identifying on the bottom of the facing page of the new registration statement or latest amendment thereto, unless expressly required in another part of the registration statement, the amount of such unsold securities being included and any filing fee paid in connection with such unsold securities, which will continue to be applied to such unsold securities. The offering of securities on the earlier registration statement will be deemed terminated as of the date of effectiveness of the new registration statement.

* * * * *

■ 8. Amend § 230.424 by revising paragraphs (g) and (i)(2) introductory text to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(g) A form of prospectus filed pursuant to this section must include the following information, as applicable, in a single exhibit submitted as required by § 232.408 of this chapter (Rule 408 of Regulation S–T), provided, however, that if the exhibit is submitted in connection with Form SF–1 (§ 239.44 of this chapter) or Form SF–3 (§ 239.45 of this chapter), it is permitted but not required to be submitted as otherwise required by Rule 408.

(1) If the form of prospectus operates to reflect the payment of filing fees for an offering or offerings pursuant to § 230.456(b) or (c) (Rule 456(b) or (c)), the calculation of filing fee table immediately followed by the information required by the form instructions to the registration fee table reflecting the payment of such filing fees for the securities that are the subject of the payment; and

(2) The maximum aggregate amount or maximum aggregate offering price of the securities to which the final prospectus relates and indication that the final prospectus is a final prospectus for the related offering, as applicable, as required by General Instruction II.F of Form S–3 (§ 239.13 of this chapter), General Instruction II.G of Form F–3 (§ 239.33 of this chapter), General Instruction II.D of Form SF–3 (§ 239.45 of this chapter), General Instruction H of Form S–4 (§ 239.25 of this chapter), and General Instruction C.2 of Form N–2 ((§§ 239.14 and 274.11a–1 of this chapter).

* * * * *

(i) * * *

(2) The form of prospectus must include the following information in an exhibit submitted as required by Rule 408 of Regulation S–T:

* * * * *

■ 9. Amend § 230.456 by revising paragraphs (b)(1)(ii) and (c)(1)(ii) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(b) * * *

(1) * * *

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (b)(1)(i) of this section by updating the ''Calculation of Filing Fee Tables'' to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings either in a post-effective amendment filed at the time of the fee payment or in the manner specified by § 230.424(g) (Rule 424(g)) in a prospectus filed pursuant to Rule 424(b).

* * * * *

(c) * * *

(1) * * *

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (c)(1)(i) of this section by updating the ''Calculation of Registration Fee'' table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings in the manner specified by Rule 424(g) in a prospectus filed pursuant to § 230.424(h) (Rule 424(h)).

* * * * *

■ 10. Amend § 230.457 by revising paragraph (p) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(p) Where all or a portion of the securities offered under a registration statement remain unsold after the offering's completion or termination, or withdrawal of the registration statement, the aggregate total dollar amount of the filing fee associated with those unsold securities (whether computed under paragraph (a) or (o) of this section) may be offset against the total filing fee due for a subsequent registration statement or registration statements. The subsequent registration statement(s) must be filed within five years of the initial filing date of the earlier registration statement, and must be filed by the same registrant (including a successor within the meaning of § 230.405), a majority-owned subsidiary of that registrant, or a parent that owns more than 50 percent of the registrant's outstanding voting securities. A note should be added to the ''Calculation of

Registration Fee'' table in the subsequent registration statement(s) providing the following information unless expressly required in another part of the registration statement:

(1) The dollar amount of the previously paid filing fee to be offset against the currently due filing fee;

(2) The amount of unsold securities or unsold aggregate offering amount from the prior registration statement associated with the claimed offset;

(3) The file number of, and the name of the registrant that filed, the earlier registration statement from which the filing fee is offset;

(4) The initial filing date of the earlier registration statement; and

(5) A statement that the registrant has:

(i) Withdrawn the prior registration statement; or

(ii) Terminated or completed any offering that included the unsold securities associated with the claimed offset under the prior registration statement.

* * * * *

■ 11. Amend § 230.473 by revising paragraph (c) to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(c) An amendment pursuant to paragraph (a) of this section which is filed with a registration statement shall be set forth on the facing page thereof. Any such amendment filed after the filing of the registration statement, any amendment altering the proposed date of public sale of the securities being registered, or any amendment filed pursuant to paragraph (b) of this section may be made by telegram, letter, or facsimile transmission. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by the filing of a signed copy of the amendment. Such confirmation shall not be deemed an amendment.

* * * * *

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

■ 12. 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.

* * * * *

■ 13. Amend § 232.13 by revising paragraph (a)(3) and the note to paragraph (c) to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, any registration statement or any post-effective amendment thereto filed pursuant to § 230.462(b) of this chapter (Rule 462(b)) by direct transmission commencing on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

(c) * * *

Note 2 to paragraph (c): All filing fees paid by electronic filers must be submitted to the lockbox depository or system, as provided in Rule 3a, including those pertaining to documents filed in paper pursuant to a hardship exemption.

* * * * *

■ 14. Amend § 232.405 by revising paragraph (b)(3)(ii) to read as follows:

§ 232.405 Interactive Data File submissions.

* * * * *

(b) * * *

(3) * * *

(ii) All of the information required on the cover page of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter); and

* * * * *

■ 15. Add § 232.408 to read as follows:

§ 232.408 Filing fee exhibit interactive data.

The filing fee exhibit required by the following provisions must be submitted in Inline XBRL as provided by the EDGAR Filer Manual except to the extent the following provisions otherwise provide: § 229.601(b)(107) of this chapter (Item 601(b)(107) of Regulation S–K); paragraph (107) to Part II Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter); § 230.424(g) and (i)(2) of this chapter (Rules 424(g) and (i)(2)); § 240.13e–1(a)(7) of this chapter (Rule 13e–1(a)(7)); Item 16(b) of Schedule 13E–3 (§ 240.13e–100 of this chapter); paragraph (4) under ''Part II—Information Not Required To Be Sent to Shareholders'' of Schedule 13E–4F (§ 240.13e–102 of this chapter); Item 25(b) of Schedule 14A (§ 240.14a–101 of this chapter); Item 12(b) of Schedule TO (§ 240.14d–100 of this chapter); paragraph (4) under ''Part II—Information Not Required To Be Sent to Shareholders'' of Schedule 14D–1F (§ 240.14d–102 of this chapter); Item 25.2.s of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter); and paragraph 18 of Item 16 of Form N–14 (§ 239.23 of this chapter).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 16. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m,78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37; and sec. 107, Pub. L. 112–106, 126 Stat. 312, unless otherwise noted.

* * * * *

■ 17. Amend Form S–1 (referenced in § 239.11) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the note that immediately follows;

■ b. Revising ''V. Registration of Additional Securities'' under the General Instructions; and

■ c. Adding Item 16.(c).

The revision and addition read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–1

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on *Rule 430A* that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with

respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act (17 CFR 230.439(b)).

* * * * *

Part II—Information Not Required in Prospectus

* * * * *

Item 16. Exhibits and Financial Statement Schedules.

* * * * *

(c) Furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;
b. Debt;
c. Debt Convertible into Equity;
d. Equity;
e. Exchange-Traded Vehicle Securities;
f. Face Amount Certificates;
g. Limited Partnership Interests;
h. Mortgage Backed Securities;
i. Non-Convertible Debt;
j. Other; and
k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares
Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(f).

For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), enter ''457(a)'', ''457(o)'' or ''Other'', as applicable.

Separately disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange or other transaction, and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the table the maximum offering price per unit.

c. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

d. Rule 457(u).

If an offering of an indeterminate amount of exchange-traded vehicle securities is being registered, enter ''457(u)''.

Separately, state that the registration statement covers an indeterminate amount of securities to be offered or sold and that the filing fee will be calculated and paid in accordance with Rule 456(d) and Rule 457(u) (§ 230.456(d) and § 230.457(u) of this chapter).

e. Other.

If relying on a rule other than Rule 457(a), (f), (o), or (u), enter ''Other''.

iii. Other Tabular Information.

Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable:

a. The security type of the class of securities to be registered;

b. The title of the class of securities to be registered;

c. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

d. The fee rate; and

e. The registration fee.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form S–1 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the

registration statement goes effective on 2/15/20X4.

• Initially files a registration statement on Form S–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form S–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form S–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000. One example could be:

• The Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and

• the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'').

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 18. Amend Form S–3 (referenced in § 239.13) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the notes that immediately follow it;

■ b. Removing and reserving paragraphs D and E of ''II. Application of General Rules and Regulations'' under the General Instructions;

■ c. Revising paragraph F of ''II. Application of General Rules and Regulations'' under the General Instructions;

■ d. Revising paragraph A of ''IV. Registration of Additional Securities and Additional Classes of Securities'' under the General Instructions; and

■ e. Revising Item 16.

The revisions read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

D. [Reserved]

E. [Reserved]

F. Information in Automatic and Non-Automatic Shelf Registration Statements

Where securities are being registered on this Form pursuant to General Instruction I.B.1, I.B.2, I.B.6, I.C., or I.D., information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430A or Rule 430B. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430A or Rule 430B, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430B, pursuant to Rule 424(b) (§ 230.424(b) of this chapter), *provided, however,* that information specified by Item 16(b) of this Form or Rule 424(g) (§ 230.424(g) of this chapter) shall be placed in an exhibit to one of these documents other than a periodic or current report under the Exchange Act incorporated by reference into the registration statement. Each post-effective amendment or final prospectus filed pursuant to Rule 424(b), in either case filed to provide required information about a specific transaction, must include in the exhibit required by Item 16(b) of this Form or Rule 424(g) (§ 230.424(g) of this chapter), respectively, the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate in such exhibit that it is a final prospectus for the related offering.

* * * * *

IV. Registration of Additional Securities and Additional Classes of Securities

A. Registration of Additional Securities Pursuant to Rule 462(b)

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be

deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act (17 CFR 230.439(b)).

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 16. Exhibits.

(a) Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

(b) Furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K, provided, however that if this is an exhibit to a post-effective amendment and the only disclosure presented is pursuant to General Instruction II.F of this Form and instruction 1.D below, the disclosure must be in solely narrative rather than substantially tabular form.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims ...		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims ...	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Maximum Aggregate Amounts and Offering Prices in Connection with Post-Effective Amendments.

If required by General Instruction II.F of this Form, provide in narrative format the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment relates. With respect to final prospectuses, *see* Rule 424(g)(2) (§ 230.424(g)(2) of this chapter).

E. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds except the narrative disclosure referenced in Instruction 1.D must appear directly beneath the heading of this exhibit if the exhibit does not otherwise require a table.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

c. Rule 457(r).

If relying on Rule 456(b) and Rule 457(r) under the Securities Act (§§ 230.456(b) and 230.457(r) of this chapter) to defer a fee, enter ''457(r)'' and *see* Instruction 2.A.iii.c.

d. Rule 457(u).

If an offering of an indeterminate amount of exchange-traded vehicle securities is being registered, enter ''457(u)''.

Separately, state that the registration statement covers an indeterminate amount of securities to be offered or sold and that the filing fee will be calculated and paid in accordance with Rule 456(d) and Rule 457(u) (§ 230.456(d) and § 230.457(u) of this chapter).

e. Other.

If relying on a rule other than Rule 457(a), (o), (r) or (u), enter ''Other''.

iii. Other Tabular Information.

a. Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable except as otherwise provided by Instruction 2.A.iii.b or c:

1. The security type of the class of securities to be registered;

2. The title of the class of securities to be registered;

3. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

4. The fee rate; and

5. The registration fee.

b. When registering two or more classes of securities pursuant to General Instruction I.B.1., I.B.2., I.B.6., or I.D. of this Form for an offering pursuant to Securities Act Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter) and where this form is not filed by a well-known seasoned issuer that elects to defer payment of fees as permitted by Rule 456(b), Rule 457(o) permits the calculation of the registration fee to be based on the maximum aggregate offering price of all the newly registered securities listed in Table 1. In this event, Table 1 must list each of the classes of securities being registered, in tandem with its security type but may omit the proposed maximum aggregate offering price for each class. Following that list, Table 1 must list the security type ''Unallocated (Universal) Shelf'' and state the maximum aggregate offering price for all of the classes of securities on a combined basis.

c. A well-known seasoned issuer registering securities on an automatic shelf registration statement pursuant to General Instruction I.D. of this Form may, at its option, defer payment of registration fees as permitted by Rule 456(b) (§ 230.456(b) of this chapter). If a registrant elects to pay all or any portion of the registration fees on a deferred basis, Table 1 in the initial filing must cite Rule 457(r), as required by Instruction 2.A.ii.c, and identify the classes of securities being registered, in tandem with their respective security types, and the registrant must state, in response to this instruction, that it elects to rely on Securities Act Rules 456(b) and 457(r), but Table 1 does not need to specify any other information with respect to those classes of securities. When the issuer files a post-effective amendment or a prospectus in accordance with Rule 456(b)(1)(ii) (§ 230.456(b)(1)(ii) of this chapter) to

pay a deferred fee, the amended Table 1 must specify either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee, which shall be calculated based on the fee payment rate in effect on the date of the fee payment.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form S–3 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item

''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form S–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form S–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form S–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000. One example could be:

- the Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'').

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 19. Amend Form S–8 (referenced in § 239.16b) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the Notes to the ''Calculation of Registration Fee'' Table; and

■ b. Revising Item 8.

The revision reads as follows:

Note: The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–8

Registration Statement Under the Securities Act of 1933

* * * * *

PART II—INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

* * * * *

Item 8. Exhibits.

(a) Furnish the exhibits required by Item 601 of Regulation S–K (§ 229.601 of this chapter), except that with respect to Item 601(b)(5):

(1) An opinion of counsel as to the legality of the securities being registered is required only with respect to original issuance securities.

(2) Neither an opinion of counsel concerning compliance with the requirements of ERISA nor an Internal Revenue Service determination letter that the plan is qualified under Section 401 of the Internal Revenue Code shall be required if, in lieu thereof, the response to this Item 8 includes an undertaking that the registrant will submit or has submitted the plan and any amendment thereto to the Internal Revenue Service (''IRS'') in a timely manner and has made or will make all changes required by the IRS in order to qualify the plan.

(b) Furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner

required by Item 601(b)(107) of Regulation S–K.

Calculation of Filing Fee Tables (Form Type)

(Exact Name of Registrant as Specified in its Charter)

TABLE 1—NEWLY REGISTERED SECURITIES

Security type	Security class title	Fee calculation rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee
X	X	X	X	X	X	X	X
Total Offering Amounts					X		X
Total Fee Offsets							X
Net Fee Due							X

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rule 457(p)											
Fee Offset Claims	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

2. Table 1: Newly Registered Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fee Calculation Rules

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

If relying on Rule 457(a) and (h) under the Securities Act (§ 230.457(a) and (h) of this chapter) to calculate the fee due for this registration statement and the offering price of the securities is not known, separately disclose the basis of the price of the securities to be registered as determined pursuant to Securities Act Rule 457(h).

b. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

c. Other.

If relying on a rule other than Rule 457(a) or (o), enter ''Other''.

ii. Other Tabular Information.

Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable:

a. The security type of the class of securities to be registered;

b. The title of the class of securities to be registered;

c. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

d. The fee rate; and

e. The registration fee.

iii. Plan Interest Registration.

If plan interests are being registered, include the following: In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate

amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.

B. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for the newly registered securities and the aggregate registration fee for the newly registered securities.

ii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iii. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instruction 3.B.ii requires a filer that claims a fee offset under Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.C for an example.

B. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.B.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.B.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

C. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form S–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form S–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form S–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000.

One example could be:

- The Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

* * * * *

■ 20. Amend Form S–11 (referenced in § 239.18) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the note that immediately follows it;

■ b. Revising paragraph ''G. Registration of Additional Securities'' under the General Instructions; and

■ c. Adding Item 36.(c).

The revision and addition read as follows:

Note: The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities And Exchange Commission

Washington, DC 20549

Form S–11

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

G. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 36. Financial Statements and Exhibits.

* * * * *

(c) Furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in Governing Instruments)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities ..	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims ...		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims ...	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(f).

For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), enter ''457(a),'' ''457(o)'' or ''Other,'' as applicable.

Separately disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange or other transaction, and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the table the maximum offering price per unit.

c. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

d. Other.

If relying on a rule other than Rule 457(a), (f), or (o), enter ''Other''.

iii. Other Tabular Information.

Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable:

a. The security type of the class of securities to be registered;

b. The title of the class of securities to be registered;

c. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

d. The fee rate; and

e. The registration fee.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes.

A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form S–11 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each

submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form S–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form S–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form S–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000.

One example could be:

- The Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'')''.

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 21. Revise Form N–14 (referenced in § 239.23) to read as follows:

Note: The text of Form N–14 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form N–14

Registration Statement Under the Securities Act of 1933

Pre-Effective Amendment No.
Post-Effective Amendment No.
Check appropriate box or boxes)
Exact Name of Registrant as Specified in Charter:
Area Code and Telephone Number:
Address of Principal Executive Offices: (Number, Street, City, State, Zip Code)
Name and Address of Agent for Service:
(Number and Street) (City) (State) (Zip Code)
Approximate Date of Proposed Public Offering:
[If the registration statement is filed pursuant to Rule 488 under the Securities Act of 1933, include the following information:]
It is proposed that this filing will become effective on *(date)* pursuant to Rule 488.

Table of Contents of Form N–14

Item 17. Undertakings

Signatures

General Instructions

A. Who May Use Form N–14

Form N–14 may be used by all management investment companies registered under the Investment Company Act of 1940 (''Investment Company Act'') and business development companies as defined by Section 2(a)(48) of the Investment Company Act to register under the Securities Act of 1933 (''Securities Act'') securities to be issued in (1) a transaction of the type specified in Securities Act Rule 145(a) [17 CFR 230.145(a)]; (2) a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; (3) an exchange offer for securities of the issuer or another person; (4) a public reoffering or resale of any securities acquired in an offering registered on Form N–14; or (5) two or more of the transactions listed in (1) through (4) registered on one registration statement.

B. Registration Fees

Section 6(b) of the Securities Act and Rule 457 [17 CFR 230.457] thereunder set forth the fee requirements under the Securities Act. Furnish the filing fee exhibit required by paragraph 18 of Item 16, unless payment will be provided using Form 24F–2 [17 CFR 274.24]. Registrants relying on Section 24(f) of the Investment Company Act, which permits registration of an indefinite number of shares, as well as closed-end management companies that make periodic repurchase offers pursuant to Rule 23c–3 [17 CFR 270.23c–3], are required to pay registration fees on an annual net basis pursuant to Rule 24f–2 under the Investment Company Act using Form 24F–2 and should not furnish the exhibit or provide filing fee disclosure on this Form. If, contemporaneous with a filing on Form N–14, a Registrant is offering its securities to the public by means of a current prospectus under an effective registration statement, the prospectus included in a registration statement filed on Form N–14 may be used, under Rule 429 [17 CFR 230.429], in connection with the securities covered by the earlier registration statement.

C. Application of Securities Act Rules

Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C [17 CFR 230.400 *et seq.*]. That regulation contains general requirements regarding the preparation and filing of registration statements.

D. Application of Exchange Act Rules

1. If the registrant or any other person which is a party to the transaction submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and that person's submission to its security holders is subject to (i) Regulation 14A [17 CFR 240.14a–1 through 14a–101] or 14C [17 CFR 240.14c–1 through 14c–101] under the Securities Exchange Act of 1934 (''Exchange Act'') or (ii) the proxy rules under Section 20 of the Investment Company Act [17 CFR 270.20a–1], then the provisions of those regulations shall apply in all respects to the submission, except that the prospectus, which may be in the form of a proxy or information statement, shall contain the information required by this Form in lieu of that required by (i) Schedule 14A [17 CFR 240.14a–101] or 14C [17 CFR 240.14c–101] of Regulation 14A or 14C and (ii) the proxy rules under Section 20 of the Investment Company Act. It should be noted, however, that if a separate proposal subject to those proxy requirements (for example, with respect to action to be taken on the election of directors or on an investment advisory contract), is submitted to security holders, the submission also must comply with the relevant information requirements of Schedule 14A or Schedule 14C and the Investment Company Act proxy rules [17 CFR 270.20a–1]. Copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as part of the registration statement shall be deemed filed pursuant to the requirements of those regulations. All other soliciting material shall be filed in accordance with that regulation.

2. If the proxy or information material sent to security holders is not subject to Regulation 14A or 14C, it shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto before the material is used.

E. Documents Composing Registration Statement

A registration statement or an amendment to it filed under the Securities Act shall consist of the facing sheet of the Form, Part A, Part B, Part C, required signatures, and all other documents which are required or which the registrant elects to file as a part of the registration statement.

F. Preparation of the Registration Statement

The following instructions for completing Form N–14 are divided into three parts. Part A relates to the prospectus required by Section 10(a) of the Securities Act. Part B relates to the Statement of Additional Information (''SAI'') that must be provided upon request to recipients of the prospectus. Part C relates to other information that is required to be in the registration statement.

Part A: The Prospectus

The purpose of the prospectus is to provide essential information about the registrant and the transaction in a way that will assist investors in making informed decisions about whether to purchase the securities being offered. Because investors who rely on the prospectus may not be sophisticated in legal or financial matters, care should be taken that the information in the prospectus is set forth in a clear, concise, and understandable manner. Extensive use of technical or legal terminology or complex language and the inclusion of excessive detail may make the prospectus difficult for many investors to understand and may, therefore, detract from its usefulness. Accordingly, registrants should adhere to the following guidelines in responding to the items in Part A:

1. Responses to these items, particularly those that call for a brief description, should be as simple and direct as possible and should include only information needed to understand the fundamental characteristics of the registrant. Brevity is particularly important in describing practices or aspects of the registrant's operations that do not differ materially from those of other investment companies.

2. Descriptions of practices that are necessitated or otherwise affected by legal requirements should generally not include detailed discussions of the law.

3. Responses to those items that use terms such as ''list'' or ''identify'' should include only a minimum explanation of the matters being listed or identified.

4. The so-called President's Letter, which provides a summary of the proposed transaction, may be used as the initial or introductory document to the Part A prospectus.

Part B: Statement of Additional Information

Part B of the Registration Statement consists of additional information about the registrant and the company being acquired and certain financial

information that the Commission has concluded is not necessary or appropriate in the public interest or for the protection of investors to require in the prospectus, if the registrant complies with certain conditions.

The SAI or information in response to Item 6 of Form N–14 need not be included in the prospectus or accompany it when sent to shareholders provided that: (1) The prospectus is sent (by first class mail or any other means designed to assure reasonably prompt delivery) or given to prospective investors at least 20 business days prior to (a) the date on which the meeting of security holders is held or (b) if no meeting is held, the earlier of the date of the vote, consent or authorization, the date the transaction is consummated or the date the securities are purchased, or (c) in the case of an exchange offer subject to the tender offer rules, the scheduled expiration date of the offer; (2) the cover page of the prospectus (or proxy statement in the case of a prospectus in the form of a proxy statement) states that the SAI is available upon oral or written request and without charge (if the registrant has a toll-free telephone number for use by prospective investors that number must be provided); in addition, a self-addressed card for requesting the SAI must also accompany the prospectus unless the toll-free telephone number is provided, and; (3) if a request for the SAI is received by the registrant, the statement must be sent within one business day of receipt of the request and must be sent by first class mail or other means designed to ensure equally prompt delivery.

The statutory provisions relating to the dating of the prospectus apply equally to the dating of the SAI for purposes of Rule 423 under the Securities Act [17 CFR 230.423]. Furthermore, the SAI should be made available to investors as of the same time that the prospectus becomes available for purposes of Rule 430 under the Securities Act [17 CFR 230.430].

G. Incorporation by Reference and Delivery of Prospectuses or Reports Filed With the Commission

If any party to a transaction registered on Form N–14 is registered under the Investment Company Act or is a business development company as defined by Section 2(a)(48) of the Investment Company Act and has a current prospectus which meets the requirements of Section 10(a)(3) of the Securities Act or is current in its reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act and Section 30 of the Investment Company Act, the registrant may, if it so elects, incorporate by reference the prospectus, the corresponding SAI, or reports, or any information in the prospectus, the corresponding SAI, or reports, which satisfies the disclosure required by Items 5, 6, and 11 through 14 of this Form. If the registrant elects to incorporate information by reference into the prospectus, a copy of each document from which information is incorporated by reference must accompany the prospectus, except that a prospectus from which information has been incorporated by reference need not be sent to an investor if the obligation to deliver a prospectus under Section 5(b)(2) of the Securities Act [15 U.S.C. 77e] has already been satisfied with respect to that investor pursuant to Rule 498A(j) for the offering described in the prospectus being incorporated by reference. Notwithstanding the foregoing the registrant may, at its discretion, incorporate any or all of the SAI into the prospectus delivered to investors, without delivering the Statement with the prospectus, so long as the SAI is available to investors as provided in General Instruction F. The registrant also may incorporate by reference into the prospectus information about the company being acquired without delivering the information with the prospectus under certain conditions pursuant to Item 6 of Form N–14, and in accordance with the requirements of Instruction F.

If the registrant elects to incorporate information by reference into the SAI, a copy of each document from which information is incorporated by reference must accompany the SAI sent to shareholders.

All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 411 under the Securities Act [17 CFR 230.411] (general rules on incorporation by reference in a prospectus) and rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents).

H. Interactive Data

1. The filing fee exhibit required by paragraph (18) of Item 16 of this Form must be submitted to the Commission as required by Rule 408 of Regulation S–T [17 CFR 232.408].

2. All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual, and must be submitted in such a manner that—for any information that does not relate to all of the classes of a registrant—will permit each class of the registrant to be separately identified.

PART A: INFORMATION REQUIRED IN THE PROSPECTUS

Item 1. Beginning of Registration Statement and Outside Front Cover Page of Prospectus

(a) The facing page of the registration statement shall contain the information required by Rule 481(a) [17 CFR 230.481(a)].

(b) The outside front cover page of the prospectus shall contain the following information:

(1) The registrant's name, the address (including zip code) and telephone number (including area code) of its principal executive offices and, where applicable, its sponsor's name;

(2) an identification of the type of fund or separate account (as defined in Section 2(a)(37) of the Investment Company Act) or a brief description of the registrant's investment objectives;

(3) a statement summarizing the proposed transaction, naming the parties to it and giving the address (including zip code) and telephone number (including area code) of the principal executive offices of the company being acquired;

(4) a statement or statements that:

(i) The prospectus sets forth concisely the information about the registrant that a prospective investor ought to know before investing;

(ii) the prospectus should be retained for future reference; and

(iii) additional information about the registrant has been filed with the Commission and is available upon oral or written request and without charge. (This statement should include instructions about how to obtain the additional information and whether any of the SAI has been incorporated by reference into the prospectus);

(5) the date of the prospectus and date of any SAI;

(6) the statement required by Securities Act Rule 481(b)(1) [17 CFR 230.481(b)(1)]; and

(7) such other information as required by rules of the Commission or of any other governmental authority having jurisdiction over the registrant or the issuance of its securities.

(c) The cover page may include other information, but that additional information must not, either by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 2. Beginning and Outside Back Cover Page of Prospectus

The following information, to the extent applicable, shall appear on the front or on the outside back cover page of the prospectus:

(a) The name of any national securities exchange on which the registrant's securities are listed and a statement that reports, proxy material and other information concerning the registrant can be inspected at the exchanges;

(b) the table of contents required by Rule 481(c) [17 CFR 230.481(c)].

Item 3. Fee Table, Synopsis Information, and Risk Factors

(a) Include a table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed in the appropriate registration statement form under the Investment Company Act (for open-end management investment companies, Item 3 of Form N–1A; for closed-end management investment companies, Item 3 of Form N–2; and for separate accounts that offer variable annuity contracts, Item 3 of Form N–3).

(b) The registrant shall include at the beginning of the prospectus a synopsis of the information contained in the prospectus. The synopsis shall be a clear and concise discussion of the key features of the transaction, of the registrant, and of the company being acquired. As to the registrant and company being acquired compare: (1) Investment objectives and policies; (2) distribution and purchase procedures and exchange rights; (3) redemption procedures; and (4) any other significant considerations. Highlight differences. Discuss the primary federal tax and other consequences of the proposed transaction to the security holders.

(c) Immediately after the synopsis, briefly discuss the principal risk factors of investing in the registrant. Briefly compare these risks with those associated with an investment in the company being acquired. If the registrant is a closed-end investment company, briefly describe any restrictions on the registrant's present or, if applicable, future ability to pay dividends with respect to any class of securities.

Item 4. Information About the Transaction

(a) Outline the material features of the proposed transaction, including:

(1) A brief summary of the terms of the acquisition agreement;

(2) a description of the securities to be issued;

(3) the reasons the registrant and the company being acquired are proposing the transaction;

(4) the federal income tax consequences, if any, to the security holders of both parties, including appropriate references to Internal Revenue Code sections; and

(5) a description of any material differences between the rights of security holders of the company being acquired and the rights of security holders of the registrant.

(b) Furnish a tabulation in columnar form showing the existing and the pro forma capitalization.

Item 5. Information About the Registrant

Provide the following information, to the extent applicable, about the registrant:

(a) If the registrant is an open-end management investment company, furnish the information required by Items 2 through 8, 9(a), 9(b), and 10 through 13 of Form N–1A under the Investment Company Act;

(b) if the registrant is a closed-end management investment company, furnish the information required by Items 4, 8.1, 8.2, 8.4, 8.5, 8.6, 9, 10, 11, and 12 of Form N–2 under the Investment Company Act;

(c) if the registrant is a separate account (as defined in Section 2(a)(37) of the Investment Company Act) offering variable annuity contracts which are registered under the Investment Company Act, furnish the information required by Items 2 through 3, 5 through 16, and 18 of Form N–3 under the Investment Company Act;

(d) if the registrant is a small business investment company registered under the Investment Company Act, furnish the information required by Items l through 7, 9 through 13, 15(a), 16, 19, 20, and 21 of Form N–5 under the Investment Company Act;

(e) a statement that the registrant is subject to the informational requirements of the Exchange Act and in accordance therewith files reports and other information with the Securities and Exchange Commission; and

(f) a statement that proxy material, reports (and where registrant is subject to Regulation 14A or l4C of the Exchange Act, proxy and information statements) and other information filed by the registrant is available on the Commission's website at *http://www.sec.gov.*

Item 6. Information About the Company Being Acquired

Information about the company being acquired shall be provided as follows:

(a) If the company being acquired is a management investment company registered under the Investment Company Act or a business development company as defined by Section 2(a)(48) of the Investment Company Act:

(1) If the transaction will be submitted to the security holders of the registrant for approval or consent, furnish the information that would be required by Items 5 and 8 of this Form as if securities of the company being acquired were being registered;

(2) if the transaction will not be submitted to security holders of the registrant for approval or consent, furnish:

(i) The information that would be required by Items 5 and 8 of this Form as if securities of the company being acquired were being registered, or

(ii) provided the requirements of Instruction F are satisfied, include a statement that information about the company being acquired is incorporated by reference from the current prospectus of the company being acquired and is available upon request from the registrant without charge. (Provide a copy of the prospectus of the acquired company upon request in accordance with the requirements in Instruction F. If the company being acquired is registered on Form N–1A, Form N–2, Form N–3, or Form N–4 under the Investment Company Act, in responding to requests under this Item, provide both a copy of the prospectus of the acquired company and the SAI with respect to that prospectus.)

(b) in addition, if the company being acquired is registered under the Investment Company Act and is required to file reports under Section 30 of that Act:

(1) State that reports and other information filed by the company being acquired is available on the Commission's website at *http://www.sec.gov;* and

(2) name any national securities exchange on which the securities of the company being acquired are listed, and state that reports, proxy statements and other information concerning the company being acquired can be inspected at the exchange.

(c) if the company being acquired is not registered under the Investment Company Act but is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, furnish the information that would be required by Item 17(a) of Form S–4 under the Securities Act; and

(d) if the company being acquired is not registered under the Investment Company Act and is not subject to the reporting requirements of either Section 13(a) or 15(d) of the Exchange Act, furnish a brief description of: the business done by the company, including basic identifying information

such as the date and form of its organization; its investment objectives and policies; and how the company is managed.

Item 7. Voting Information

(a) If proxies are to be solicited, include, where applicable, the information called for by Items 2 and 4 of Schedule 14A of Regulation 14A under the Exchange Act.

(b) If the transaction is an exchange offer or if proxies are not to be solicited, include, where applicable, the information called for by Item 2 of Schedule 14C under the Exchange Act, and state the date, time and place of the meeting of the security holders, unless such information is otherwise disclosed in material furnished to security holders with the information statement.

(c) In addition to the information called for by paragraphs (a) and (b) above, include:

(1) The information called for by Item 3 of Schedule 14A of Regulation 14A under the Exchange Act;

Instruction: Also state that the exercise of such rights is subject to the ''forward pricing'' requirements of Rule 22c–1 under the Investment Company Act [17 CFR 270.22c–1] and that the Rule supersedes contrary provisions of state law.

(2) the information called for by Item 21 of Schedule 14A of Regulation 14A under the Exchange Act about both the registrant and the company being acquired;

(3) the information called for by Items 6(a) and (b) of Schedule 14A of Regulation 14A under the Exchange Act about both the registrant and the company being acquired;

(4) with respect to both the registrant and the company being acquired:

(i) The name and address of each person who controls either party to the transaction and explain the effect of that control on the voting rights of other security holders. As to each control person, state the percentage of the voting securities owned or any other basis of control. If the control person is a company, give the state or other sovereign power under the laws of which it is organized. List all parents of the control person.

Instruction: For purposes of subparagraph (c)(4)(i), ''control'' shall mean (1) the beneficial ownership, either directly or through one or more controlled companies, of more than 25 percent of the voting securities of a company; (2) the acknowledgment or assertion by either the controlled or controlling party of the existence of control; or (3) an adjudication under Section 2(a)(9) of the Investment Company Act [15 U.S.C. 80a–2(a)(9)], which has become final, that control exists.

(ii) the name, address and percentage of ownership of each person who owns of record or is known by either party to the transaction to own of record or beneficially 5 percent or more of any class of either party's outstanding equity securities.

Instructions: 1. The percentages are to be calculated on the basis of the amount of securities outstanding.

2. Indicate, as far as practicable, the percentage of registrant's shares to be owned by such persons upon consummation of the proposed transaction on the basis of present holdings and commitments.

3. If to the knowledge of either party to the transaction or any principal underwriter of their securities, 5 percent or more of any class of voting securities of either party are or will be held subject to any voting trust or other similar agreement, this fact must be disclosed.

4. Indicate whether the securities are owned both of record and beneficially, or of record only, or beneficially only, and show the respective percentage owned in each manner.

(iii) a statement of all equity securities of the registrant, owned by all officers, directors and members of the advisory board of the registrant as a group, without naming them. In any case where the amount owned by directors and officers as a group is less than l percent of the class, a statement to that effect is sufficient.

Item 8. Interest of Certain Persons and Experts

(a) Describe briefly any material interest, direct or indirect, by security holdings or otherwise, of any affiliated person of the registrant in the proposed transaction.

Instruction: This Item shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) If any expert named in the registration statement as having prepared or certified any part thereof (or named as having prepared or certified a report or valuation for use in connection with the registration statement), or counsel for the registrant, underwriters or selling security holders named in the prospectus as having given an opinion upon the validity of the securities being registered or upon other legal matters in connection with the registration or offering of such securities, was employed for such purpose on a contingent basis, or at the time of such preparation, certification or opinion, or at any time thereafter through the date of effectiveness of the registration statement to which such preparation, certification, or opinion relates, had, or is to receive in connection with the offering, a substantial interest, direct or indirect, in the registrant or was connected with the registrant, managing underwriter (or any principal underwriter, if there are no managing underwriters), voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Instructions: 1. The interest of an expert (other than an accountant) or counsel will not be deemed substantial and need not be disclosed if the interest, including the fair market value of all securities of the registrant owned, received and to be received, or subject to options, warrants or rights received or to be received by the expert or counsel does not exceed $50,000. For purposes of this instruction, the term ''expert'' or counsel includes the firm, corporation, partnership or other entity, if any, by which the expert or counsel is employed or of which he is a member or of counsel to, and all attorneys in the case of counsel, and all nonclerical personnel in the case of named experts, participating in the matter on behalf of the firm, corporation, partnership or entity.

2. Accountants providing a report on the financial statements, presented or incorporated by reference in the registration statement, should note Section 210.2–01 [17 CFR 210.2–01] of Regulation S–X for the Commission's requirements regarding ''Qualification of Accountants'' which discusses disqualifying interests.

Item 9. Additional Information Required for Reoffering by Persons Deemed To Be Underwriters

If any of the securities are to be reoffered to the public by any person who is deemed to be an underwriter thereof, furnish the following information in the prospectus, to the extent it is not already furnished therein:

(a) The name of each security holder;

(b) the nature of any position, office or other material relationship which the selling security holder has had within the past three years with the registrant or any of its predecessors or affiliated companies;

(c) the amount of securities owned by the selling security holder prior to the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the

percentage of the class to be owned by the security holder after completion of the offering; and

(d) information about the transaction in which the securities were acquired and any material changes in the registrant's affairs after the transaction.

PART B: INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION

Item 10. Cover Page

(a) The outside cover page is required to contain the following information:

(i) The registrant's name;

(ii) a statement or statements (A) that the Statement of Additional Information is not a prospectus; (B) that the Statement of Additional Information should be read in conjunction with the prospectus; and (C) from whom a copy of the prospectus may be obtained;

(iii) the date of the prospectus to which the Statement of Additional Information relates and any other identifying information; and

(iv) the date of the Statement of Additional Information.

(b) The cover page may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of required information.

Item 11. Table of Contents

Set forth under appropriate captions (and sub-captions) a list of the contents of the SAI and, where useful, provide cross-references to related disclosure in the prospectus.

Item 12. Additional Information About the Registrant

(a) If the registrant is an open-end management investment company, furnish the information required by Items 14 through 27 of Form N–1A under the Investment Company Actor Items 20 through 26 of Form N–3, as applicable.

(b) If the registrant is a closed-end management investment company, furnish the information required by Items 14 through 23, and Item 4.2 if the registrant is regulated as a business development company, of Form N–2 under the Investment Company Act.

(c) If the registrant is not an open-end management investment company, no specific information about the company need be included.

Item 13. Additional Information About the Company Being Acquired

If the transaction will be submitted to the security holders of the registrant for approval or consent:

(a) If the company being acquired is an open-end management investment company, furnish the information required by Items 14 through 17 and 19 through 27 of Form N–1A under the Investment Company Act or Items 20 through 26 of Form N–3, as applicable.

(b) If the company being acquired is a closed-end management investment company, furnish the information required by Item 15 through 18 and Item 20 through 23 of Form N–2. If the company being acquired is regulated as a business development company, also furnish the information required by Items 4.2 and 8.6.c (if applicable) of Form N–2.

(c) If the company being acquired is not an open-end management investment company, no specific information about the company need be included.

Item 14. Financial Statements

The SAI shall contain the financial statements and schedules of the acquiring company and the company to be acquired required by Regulation S–X [17 CFR 210] for the periods specified in Article 3 of Regulation S–X [17 CFR 210.3–01 *et seq.*] except:

1. The following statements and schedules required by Regulation S–X may be omitted from Part B of the registration statement and included in Part C:

(i) The statements of any subsidiary which is not a majority-owned subsidiary; and

(ii) columns C and D of Schedule III [17 CFR 210.12–14] in support of the most recent balance sheet; and

2. the pro forma financial statements required by Rule 11–01 of Regulation S–X [17 CFR 210.11–01] need not be prepared if the net asset value of the company being acquired does not exceed ten percent of the registrant's net asset value, both of which are measured as of a specified date within thirty days prior to the date of filing of this registration statement.

PART C: OTHER INFORMATION

Item 15. Indemnification

State the general effect of any contract, arrangement or statute under which any director, officer, underwriter or affiliated person of the registrant is insured or indemnified in any manner against any liability which may be incurred in such capacity, other than insurance provided by any director, officer, affiliated person or underwriter for its own protection.

Instruction: In responding to this Item the registrant should take note of the provisions of Rules 461(c) [17 CFR 230.461] and 484 [17 CFR 230.484] under the Securities Act and Sections 17(h) and (i) of the Investment Company Act [15 U.S.C. 80a–17(h) and (i)].

Item 16. Exhibits

Subject to General Instructions B (Registration Fees), G (Incorporation by Reference), and H (Interactive Data) of this Form, and Rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated, unless otherwise required by Rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

(1) copies of the charter of the registrant as now in effect;

(2) copies of the existing bylaws or corresponding instruments of the registrant;

(3) copies of any voting trust agreement affecting more than 5 percent of any class of equity securities of the registrant;

(4) copies of the agreement of acquisition, reorganization, merger, liquidation and any amendments to it;

(5) copies of all instruments defining the rights of holders of the securities being registered, including copies, where applicable, of the relevant portion of the articles of incorporation or by-laws of the registrant.

(6) copies of all investment advisory contracts relating to the management of the assets of the registrant;

(7) copies of each underwriting or distribution contract between the registrant and a principal underwriter, and specimens or copies of all agreements between principal underwriters and dealers;

(8) copies of all bonus, profit sharing, pension or other similar contracts or arrangements wholly or partly for the benefit of directors or officers of the registrant in their capacity as such. Furnish a reasonably detailed description of any plan that is not set forth in a formal document;

(9) copies of all custodian agreements and depository contracts under Section 17(f) of the Investment Company Act [15 U.S.C. 80a–17(f)], for securities and similar investments of the registrant, including the schedule of remuneration;

(10) copies of any plan entered into by registrant pursuant to Rule l2b–1 under the Investment Company Act [17 CFR 270.12b–1] and any agreements with any person relating to implementation of the plan, and copies of any plan entered into by registrant pursuant to Rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3], any

agreement with any person relating to implementation of the plan, any amendment to the plan, and a copy of the portion of the minutes of the meeting of the registrant's directors describing any action taken to revoke the plan;

(11) an opinion and consent of counsel as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable;

(12) an opinion, and consent to their use, of counsel or, in lieu of an opinion, a copy of the revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to shareholders discussed in the prospectus;

(13) copies of all material contracts of the registrant not made in the ordinary course of business which are to be performed in whole or in part on or after the date of filing the registration statement;

(14) copies of any other opinions, appraisals or rulings, and consents to their use relied on in preparing the registration statement and required by Section 7 of the Securities Act [15 U.S.C. 77g];

(15) all financial statements omitted pursuant to Item 14(a)(l);

(16) manually signed copies of any power of attorney pursuant to which the name of any person has been signed to the registration statement;

(17) any additional exhibits which the registrant may wish to file; and

(18) furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered.

Note. Registrants that must pay registration fees using Form 24F–2 are not required to respond to this Item.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure:

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this Form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 under the Securities Act [17 CFR 230.457] and any other rule being relied upon. All disclosure these instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

2. Table 1: Newly Registered Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this Form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) under the Securities Act [17 CFR 230.457(a)], enter ''457(a)''.

b. Rule 457(f).

For a fee calculated as specified in Rule 457(f) under the Securities Act [17 CFR 230.457(f)], enter ''457(a)'', 457(o)'' or ''Other'', as applicable.

Separately disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange or other transaction, and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the table the maximum offering price per unit.

c. Rule 457(o).

If relying on Rule 457(o) under the Securities Act [17 CFR 230.457(o)] to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. A Registrant may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

d. Other.

If relying on a rule other than Rule 457(a), (f), or (o) enter ''Other''.

iii. Other Tabular Information.

Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable:

a. The security type of the class of securities to be registered;

b. The title of the class of securities to be registered;

c. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

d. The fee rate; and

e. The registration fee.

iv. Pre-Effective Amendments.

A. If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. A Registrant that uses this recalculation procedure must separately disclose that it is using it, and expressly reference this Instruction 2.A.iv.

B. Totals.

i. Total Offering Amounts.

Provide the maximum aggregate offering price for the newly registered securities, and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act [17 CFR 230.424], in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act [17 CFR 230.457(b) or (p)] or Rule 0–11(a)(2) under the Exchange Act [17 CFR 240.0–11(a)(2)] to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) or Rule 0–11(a)(2) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form N–14, unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i. If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act [17 CFR 230.457(p)] to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act [17 CFR 230.405].

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form N–2 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form N–2 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form N–2 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form N–2 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form N–14 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form N–2 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form N–14 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form N–2 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form N–2 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form N–2 (333–123456) filed on 2/15/20X1 or the initial filing of the Form N–2 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000.

One example could be:

- The Form N–2 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the filing of the Form N–2 (333–123456) on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form N–2 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification

requirement solely by citing to the Form N–2 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 [17 CFR 230.429], provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'')''.

Note to Instruction 4. Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

General Instructions.

1. Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed provided that they do not contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.

2. The registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (*e.g.,* disclosure of bank account numbers, social security numbers, home addresses and similar information).

3. The registrant may redact specific provisions or terms of exhibits required to be filed by paragraph (13) of this Item if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this Instruction 3 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

4. Each exhibit identified in the exhibit index (other than an exhibit filed in eXtensible Business Reporting Language) must include an active link to an exhibit that is filed with the registration statement or, if the exhibit is incorporated by reference, an active hyperlink to the exhibit separately filed on EDGAR. If the registration statement is amended, each amendment must include active hyperlinks to the exhibits required with the amendment.

Item 17. Undertakings

(1) The undersigned registrant agrees that prior to any public reoffering of the securities registered through the use of a prospectus which is a part of this registration statement by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c) of the Securities Act [17 CFR 230.145c], the reoffering prospectus will contain the information called for by the applicable registration form for the reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(2) The undersigned registrant agrees that every prospectus that is filed under paragraph (1) above will be filed as a part of an amendment to the registration statement and will not be used until the amendment is effective, and that, in determining any liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement for the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering of them.

Signatures

As required by the Securities Act of 1933, this registration statement has been signed on behalf of the registrant, in the City of _____ _____ and State of _____, on the __ ____ day of _____,_____.

Registrant _____

By: _____

(Signature and Title)

As required by the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature

Title

Date

■ 22. Amend Form S–4 (referenced in § 239.25) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the note that immediately follows it;

■ b. Revising General Instruction H;

■ c. Removing and reserving General Instruction J;

■ d. Revising General Instruction K; and

■ e. Adding Item 21.(d).

The revisions and addition read as follows:

Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

H. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of This Chapter)

If the registration statement relates to offerings of securities pursuant to Rule 415(a)(1)(viii), required information about the type of contemplated transaction and the company to be acquired only need be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired, however, must be included in the prospectus by means of a post-effective amendment; *Provided, however,* that where the transaction in which the securities are being offered pursuant to a registration statement under the Securities Act of 1933 would itself qualify for an exemption from Section 5 of the Act, absent the existence of other similar (prior or subsequent) transactions, a prospectus supplement could be used to furnish the information necessary in connection with such transaction. Each post-effective amendment or final prospectus supplement filed to provide required information about a specific transaction and particular company being acquired must include in the exhibit required by Item 21(d) of this Form or Rule 424(g) (§ 230.424(g) of this chapter), respectively, the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates, and each such prospectus must indicate in such exhibit that it is a final prospectus for the related offering.

* * * * *

J. [Reserved]

K. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The Facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)]

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 21. Exhibits and Financial Statement Schedules

* * * * *

(d) Furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K, provided, however that if this is an exhibit to a post-effective amendment and the only disclosure presented is pursuant to General Instruction H of this Form and instruction 1.D below, the disclosure may be in solely narrative rather than substantially tabular form.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities ..	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims ...		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims ...	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;
b. Debt;
c. Debt Convertible into Equity;
d. Equity;
e. Exchange-Traded Vehicle Securities;
f. Face Amount Certificates;
g. Limited Partnership Interests;
h. Mortgage Backed Securities;
i. Non-Convertible Debt;
j. Other; and
k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares
Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Maximum Aggregate Amounts and Offering Prices in Connection with Post-Effective Amendments.

If required by General Instruction H of this Form, provide in narrative format the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment relates. With respect to final prospectuses, see Rule 424(g)(2) (§ 230.424(g)(2) of this chapter).

E. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds except the narrative disclosure referenced in Instruction 1.D must appear directly beneath the heading of this exhibit if the exhibit does not otherwise require a table.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(f).

For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), enter ''457(a)'', ''457(o)'' or ''Other'', as applicable.

Separately disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange or other transaction, and any amount of cash to be received by the registrant in

connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the table the maximum offering price per unit.

c. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

d. Other.

If relying on a rule other than Rule 457(a), (f), or (o), enter ''Other''.

iii. Other Tabular Information.

a. Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable except as otherwise provided by Instruction 2.A.iii.b:

1. The security type of the class of securities to be registered;

2. The title of the class of securities to be registered;

3. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

4. The fee rate; and

5. The registration fee.

b. When registering two or more classes of securities on this Form to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), Rule 457(o) permits the calculation of the registration fee to be based on the maximum aggregate offering price of all the newly registered securities listed in Table 1 on a combined basis if the registrant is eligible to use Form S–3 for a primary offering. In this event, Table 1 must list each of the classes of securities being registered, in tandem with its security type but may omit the proposed maximum aggregate offering price for each class. Following that list, Table 1 must list the security type ''Unallocated (Universal) Shelf'' and state the maximum aggregate offering price for all of the classes of securities on a combined basis.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this

chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form S–4 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form S–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form S–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form S–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000.

One example could be:

- The Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus, must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'').

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 23. Amend Form F–1 (referenced in § 239.31) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the Note immediately below it;

■ b. Revising ''V. Registration of Additional Securities'' under the General Instructions; and

■ c. Adding Item 8.c.

The revision and addition read as follows:

Note: The text of Form F–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form F–1

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 8. Exhibits and Financial Statement Schedules.

* * * * *

c. Furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

(Translation of Registrant's Name into English)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities ..	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims ...		X	X	X		X					

TABLE 2—FEE OFFSET CLAIMS AND SOURCES—Continued

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims ...	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity Class A Preferred Shares

Equity Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(f).

For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), enter ''457(a)'' ''457(o) or ''Other,'' as applicable.

Separately disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange or other transaction, and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the table the maximum offering price per unit.

c. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount

Registered and the Proposed Maximum Offering Price Per Unit.

d. Rule 457(u).

If an offering of an indeterminate amount of exchange-traded vehicle securities is being registered, enter ''457(u)''.

Separately, state that the registration statement covers an indeterminate amount of securities to be offered or sold and that the filing fee will be calculated and paid in accordance with Rule 456(d) and Rule 457(u) (§ 230.456(d) and § 230.457(u) of this chapter).

e. Other.

If relying on a rule other than Rule 457(a), (f), (o), or (u) enter ''Other''.

iii. Other Tabular Information.

Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable:

a. The security type of the class of securities to be registered;

b. The title of the class of securities to be registered;

c. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

d. The fee rate; and

e. The registration fee.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form F–1 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which

those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form F–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form F–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form F–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form F–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form F–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form F–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form F–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form F–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form F–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form F–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form F–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000.

One example could be:

- The Form F–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form F–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form F–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form F–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'')''.

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 24. Amend Form F–3 (referenced in § 239.33) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the Notes to the Calculation of Filing Fee Table;

■ b. Removing and reserving paragraphs C and F of ''II. Application of General Rules and Regulations'' under the General Instructions;

■ c. Revising paragraph G of ''II. Application of General Rules and Regulations'' under the General Instructions;

■ d. Revising paragraph A of ''IV. Registration of Additional Securities and Additional Classes of Securities'' under the General Instructions; and

■ e. Revising Item 9.

The revisions read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. [Reserved]

* * * * *

F. [Reserved]

G. Information in Automatic and Non-Automatic Shelf Registration Statements.

Where securities are being registered on this Form pursuant to General Instruction I.A.5, I.B.1, I.B.2, I.B.5, or I.C., information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430A or Rule 430B. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430A or Rule 430B, a post-effective amendment to the registration statement, or an Exchange Act report incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430B, pursuant to Rule 424(b) (§ 230.424 (b) of this chapter), *provided, however,* that information specified by Item 9(b) of this Form or Rule 424(g) (§ 230.424(g) of this chapter) shall be placed in an exhibit to one of these documents other than an Exchange Act report incorporated by reference into the registration statement. Each post-effective amendment or final prospectus filed pursuant to Rule 424(b), in either case filed to provide required information about a specific transaction, must include in the exhibit required by Item 9(b) of this Form or Rule 424(g) (§ 230.424(g) of this chapter), respectively, the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate in such exhibit that it is a final prospectus for the related offering.

* * * * *

IV. Registration of Additional Securities and Classes of Securities

A. Registration of Additional Securities Pursuant to Rule 462(b)

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 9. Exhibits.

(a) Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

(b) Furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K, provided, however that if this is an exhibit to a post-effective amendment and the only disclosure presented is pursuant to General Instruction II.G of this Form and instruction 1.D below, the disclosure may be in solely narrative rather than substantially tabular form.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in Its Charter)

(Translation of Registrant's Name Into English)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities ..	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES—Continued

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims ...		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims ...	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;
b. Debt;
c. Debt Convertible into Equity;
d. Equity;
e. Exchange-Traded Vehicle Securities;
f. Face Amount Certificates;
g. Limited Partnership Interests;
h. Mortgage Backed Securities;
i. Non-Convertible Debt;
j. Other; and
k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares
Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Maximum Aggregate Amounts and Offering Prices in Connection with Post-Effective Amendments.

If required by General Instruction II.G of this Form, provide in narrative format the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment relates. With respect to final prospectuses, see Rule 424(g)(2) (§ 230.424(g)(2) of this chapter).

E. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds except the narrative disclosure referenced in Instruction 1.D must appear directly beneath the heading of this exhibit if the exhibit does not otherwise require a table.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with

the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

c. Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

c. Rule 457(r).

If relying on Rule 456(b) and Rule 457(r) under the Securities Act (§§ 230.456(b) and 230.457(r) of this chapter) to defer a fee, enter ''457(r)'' and *see* Instruction 2.A.iii.c.

d. Rule 457(u).

If an offering of an indeterminate amount of exchange-traded vehicle securities is being registered, enter ''457(u)''.

Separately, state that the registration statement covers an indeterminate amount of securities to be offered or sold and that the filing fee will be calculated and paid in accordance with Rule 456(d) and Rule 457(u) (§ 230.456(d) and § 230.457(u) of this chapter).

e. Other.

If relying on a rule other than Rule 457(a), (o), (r) or (u), enter ''Other''.

iii. Other Tabular Information.

a. Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable except as otherwise provided by Instruction 2.A.iii.b or c:

1. The security type of the class of securities to be registered;

2. The title of the class of securities to be registered;

3. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

4. The fee rate; and

5. The registration fee.

b. When registering two or more classes of securities pursuant to General Instruction I.B.1., I.B.2., I.B.5., or I.C. of this Form for an offering pursuant to Securities Act Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter), and where this form is not filed by a well-known seasoned issuer that elects to defer payment of fees as permitted by Rule 456(b), Rule 457(o) permits the calculation of the registration fee to be based on the maximum aggregate offering price of all the newly registered securities listed in Table 1. In this event, Table 1 must list each of the classes of securities being registered, in tandem with its security type but may omit the proposed maximum aggregate offering price for each class. Following that list, Table 1 must list the security type ''Unallocated (Universal) Shelf'' and state the maximum aggregate offering price for all of the classes of securities on a combined basis.

c. A well-known seasoned issuer registering securities on an automatic shelf registration statement pursuant to General Instruction I.C. of this Form may, at its option, defer payment of registration fees as permitted by Rule 456(b) (§ 230.456(b) of this chapter). If a registrant elects to pay all or any portion of the registration fees on a deferred basis, Table 1 in the initial filing must cite Rule 457(r), as required by Instruction 2.A.ii.c, and identify the classes of securities being registered, in tandem with their respective security types, and the registrant must state, in response to this instruction, that it elects to rely on Securities Act Rules 456(b) and 457(r), but Table 1 does not need to specify any other information with respect to those classes of securities. When the issuer files a post-effective amendment or a prospectus in accordance with Rule 456(b)(1)(ii) (§ 230.456(b)(1)(ii) of this chapter) to pay a deferred fee, the amended Table 1 must specify either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee, which shall be calculated based on the fee payment rate in effect on the date of the fee payment.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form F–3 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form F–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form F–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form F–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form F–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form F–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form F–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form F–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form F–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form F–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form F–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form F–1 (333–123456) on 1/15/20X1 in relation to

which contemporaneous fee payments were made equal to $30,000. One example could be:

- The Form F–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form F–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form F–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form F–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus, must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'').

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 25. Amend Form F–4 (referenced in § 239.34) by:

■ a. Removing the ''Calculation of Registration Fee'' table and note immediately below it;

■ b. Removing and reserving paragraph D.3 of the General Instructions;

■ c. Revising paragraphs F and H of the General Instructions; and

■ d. Adding Item 21(d).

The revisions and addition read as follows:

Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form F–4

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

D. Application of General Rules and Regulations

* * * * *

3. [Reserved]

* * * * *

F. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of This Chapter)

If the registration statement relates to offerings of securities pursuant to Rule 415(a)(1)(viii), required information about the type of contemplated transaction (and the company being acquired) need only be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired must be included in the prospectus by means of a post-effective amendment. Each post-effective amendment filed to provide required information about a specific transaction and particular company being acquired must include in the exhibit required by Item 21(d) of this Form the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment relates.

* * * * *

H. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 21. Exhibits and Financial Statement Schedules.

* * * * *

(d) Furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K, provided, however that if this is an exhibit to a post-effective amendment and the only disclosure presented is pursuant to General Instruction F of this Form and instruction 1.D below, the disclosure may be in solely narrative rather than substantially tabular form.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

(Translation of Registrant's Name into English)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are being initially registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Maximum Aggregate Amounts and Offering Prices in Connection with Post-Effective Amendments.

If required by General Instruction F of this Form, provide in narrative format the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment relates.

E. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds except the narrative disclosure referenced in Instruction 1.D must appear directly beneath the heading of this exhibit if the exhibit does not otherwise require a table.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(f).

For a fee calculated as specified in Rule 457(f) (§ 230.457(f) of this chapter), enter ''457(a)'', ''457(o)'' or ''Other'', as applicable.

Separately disclose the amount and value of securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form, and explain how the value was calculated in accordance with Rule 457(f)(1) and (2), as applicable. The explanation must include the value per share of the securities to be received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange or other transaction, and any amount of cash to be received by the registrant in connection with the exchange or other transaction. In accordance with Rule 457(f)(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the exchange or other transaction from, and add any amount of cash to be received by the registrant in connection with the exchange or other transaction to, the value of the securities to be received or cancelled as calculated in accordance with Rule 457(f)(1) and (2), as applicable. Omit from the table the maximum offering price per unit.

c. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

d. Other.

If relying on a rule other than Rule 457(a), (f), or (o), enter ''Other''.

iii. Other Tabular Information.

a. Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable except as otherwise provided by Instruction 2.A.iii.b:

1. The security type of the class of securities to be registered;

2. The title of the class of securities to be registered;

3. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

4. The fee rate; and

5. The registration fee.

b. When registering two or more classes of securities on this Form to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), Rule 457(o) permits the calculation of the registration fee to be based on the maximum aggregate offering price of all the newly registered securities listed in Table 1 on a combined basis if the registrant is eligible to use Form F–3 for a primary offering. In this event, Table 1 must list each of the classes of securities being registered, in tandem with its security type but may omit the proposed maximum aggregate offering price for each class. Following that list, Table 1 must list the security type ''Unallocated (Universal) Shelf'' and state the maximum aggregate offering price for all of the classes of securities on a combined basis.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of

securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form F–4 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form F–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form F–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form F–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form F–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form F–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form F–1 (333–123467) filed on 1/15/

20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form F–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form F–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form F–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form F–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form F–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000. One example could be:

- The Form F–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form F–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form F–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form F–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'').

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 26. Amend Form F–10 (referenced in § 239.40) by:

■ a. Removing the ''Calculation of Registration Fee'' table;

■ b. Removing from immediately below the ''Calculation of Registration Fee'' table the text that begins with an asterisk and the text that begins with the phrase ''If as a result of stock splits, stock dividends or similar transactions,'';

■ c. Revising paragraph G of General Instruction II;

■ d. Adding reserve paragraphs (102) through (106) of Part II—Information Not Required to be Delivered to Offerees or Purchasers; and

■ e. Adding paragraph (107) to Part II—Information Not Required to be Delivered to Offerees or Purchasers.

The revision and additions read as follows:

Note: The text of Form F–10 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form F–10

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

G. At the time of filing this registration statement, the Registrant shall pay to the Commission in accordance with the instructions to this Form and Rule 111 under the Securities Act a fee in U.S. dollars in the amount prescribed by Section 6 of the Securities Act. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering. The filing fee shall be computed in accordance with Rule 457 except that Rule 457(f) shall not apply.

* * * * *

PART II—INFORMATION NOT REQUIRED TO BE DELIVERED TO OFFEREES OR PURCHASERS

* * * * *

(102) through (106) [*Reserved*].

(107) The following information, in substantially the tabular form indicated, as to each type and class of securities being registered.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

(Translation of Registrant's Name into English (if Applicable))

TABLE 1—NEWLY REGISTERED SECURITIES

	Security type	Security class title	Fee calculation rule or instruction	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee
Fees to Be Paid	X	X	X	X	X	X	X	X
Fees Previously Paid	X	X	X	X	X	X		X
	Total Offering Amounts					X		X
	Total Fees Previously Paid							X
	Total Fee Offsets							X

TABLE 1—NEWLY REGISTERED SECURITIES—Continued

	Security type	Security class title	Fee calculation rule or instruction	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee
	Net Fee Due							X

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims ...		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims ...	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are being initially registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to General Instructions II.G. through II.I. of this Form and the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

E. Rule 416.

If, as a result of stock splits, stock dividends, or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

F. Submission Method.

This exhibit must be submitted as required by Rule 408 of Regulation S–T (§ 232.408 of this chapter).

2. Table 1: Newly Registered Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation Rules and Instructions.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Exchange Offers—General Instruction II.H.

For a fee calculated as specified in General Instruction II.H for an exchange offer, enter ''457(a)'', ''457(o)'', or ''Other'', as applicable. Separately disclose the amount and value of securities that may be received by the registrant or cancelled upon the issuance of securities registered on this Form from United States residents, and explain how the value was calculated in accordance with General Instruction II.H.(1) or II.H.(2). The explanation must include the value per share of the securities that may be received by the registrant or cancelled upon the issuance of securities registered on this Form. Also disclose any amount of cash to be paid by the registrant in connection with the exchange, and any amount of cash that may be received from United States residents by the registrant in connection with the exchange. In accordance with General Instruction II.H.(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash paid by the registrant in connection with the exchange from, and add any amount of cash that may be received from United States residents by the registrant in connection with the exchange to, the value of the securities to be received or cancelled as calculated in accordance with General Instruction II.H.(1) or II.H.(2). Omit from the filing fee table the maximum offering price per unit.

c. Business Combinations—General Instruction II.I.

For a fee calculated as specified in General Instruction II.I for a business combination, enter ''457(a)'', 457(o)'', or ''Other'', as applicable.

Separately, disclose the amount and value of the equity securities of the predecessor companies held by United States residents being offered the registrant's securities, and explain how the value was calculated in accordance with General Instruction II.I.(1) or II.I.(2). The explanation must include the value per share of the equity securities of the predecessor companies held by United States residents being offered the registrant's securities. Also disclose any amount of cash to be paid by the registrant in connection with the business combination, and any amount of cash that may be received from United States residents by the registrant in connection with the business combination. In accordance with General Instruction II.I.(3), to determine the maximum aggregate offering price for such a transaction, the registrant should deduct any amount of cash to be paid by the registrant in connection with the business combination from, and add any amount of cash that may be received from United States residents by the registrant in connection with the business combination to, the value of the equity securities of the predecessor companies held by United States residents being offered the registrant's securities as calculated in accordance with General Instruction II.I.(1) or II.I.(2). Omit from the filing fee table the maximum offering price per unit.

d. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

e. Other.

If relying on a rule other than Rule 457(a) or (o), enter ''Other''.

iii. Other Tabular Information.

Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable:

a. The security type of the class of securities to be registered;

b. The title of the class of securities to be registered;

c. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

d. The fee rate; and

e. The registration fee.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Totals.

i. Total Offering Amounts.

Provide the maximum aggregate offering price and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) or Rule 0–11(a)(2) under the Exchange Act (§ 240.0–11(a)(2) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form F–10) unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form S–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form S–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form S–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000. One example could be:

- The Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column

heading ''Maximum Aggregate Offering Price of Securities Previously Registered'')''.

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 27. Amend Form SF–1 (referenced in § 239.44) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the note that immediately follows it;

■ b. Revising ''III. Registration of Additional Securities'' under the General Instructions; and

■ c. Revising Item 14.

The revisions read as follows:

Note: The text of Form SF–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form SF–1

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

III. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number and CIK number of the issuer, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 14. Exhibits.

(a) Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S–K (17 CFR 229.601).

(b) File the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

TABLE 1—NEWLY REGISTERED SECURITIES

	Security type	Security class title	Fee calculation rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee
Fees to Be Paid	X	X	X	X	X	X	X	X
Fees Previously Paid	X	X	X	X	X	X		X
	Total Offering Amounts					X		X
	Total Fees Previously Paid							X
	Total Fee Offsets							X
	Net Fee Due							X

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b)											
Fee Offset Claims		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

2. Table 1: Newly Registered Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

c. Other.

If relying on a rule other than Rule 457(a) or (o), enter ''Other''.

iii. Other Tabular Information.

Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable:

a. The security type of the class of securities to be registered;

b. The title of the class of securities to be registered;

c. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

d. The fee rate; and

e. The registration fee.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for the newly registered securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rule 457(b).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form SF–1 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rule 457(b)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rule 457(b)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, parent owning more than 50% of the registrant's outstanding voting securities, or other registrant eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form S–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form S–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form S–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the filing of the Form S–1 (333–123456) on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000. One example could be:

- The Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee

payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus, must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'')''.

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

■ 28. Amend Form SF–3 (referenced in § 239.45) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the ''Notes to the 'Calculation of Registration Fee' Table'';

■ b. Removing and reserving paragraph C. of ''II. Application of General Rules and Regulations'' under the General Instructions;

■ c. Revising paragraph D of ''II. Application of General Rules and Regulations'' under the General Instructions;

■ d. Revising ''III. Registration of Additional Securities Pursuant to Rule 462(b)'' under the General Instructions; and

■ e. Revising Item 14.

The revisions read as follows:

Note: The text of Form SF–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form SF–3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. [Reserved]

D. Information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430D. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430D, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430D, pursuant to Rule 424(h) or Rule 424(b) (§ 230.424(h) or § 230.424(b) of this chapter), *provided, however,* that information specified by Item 14(b) of this Form or Rule 424(g) (§ 230.424(g) of this chapter) shall be placed in an exhibit to one of these documents other than a periodic or current report under the Exchange Act incorporated by reference into the registration statement. Each post-effective amendment or final prospectus filed pursuant to Rule 424(b), in either case filed to provide required information about a specific transaction, must include in the exhibit required by Item 14(b) of this Form or Rule 424(g) (§ 230.424(g) of this chapter), respectively, the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates and each such prospectus must indicate in such exhibit that it is a final prospectus for the related offering.

III. Registration of Additional Securities Pursuant to Rule 462(b)

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rule 439(b) under the Securities Act [17 CFR 230.439(b)].

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 14. Exhibits.

(a) Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S–K (17 CFR 229.601).

(b) File the following information, in substantially the tabular form indicated, as to each type and class of securities being registered in the manner required by Item 601(b)(107) of Regulation S–K, provided, however that if this is an exhibit to a post-effective amendment and the only disclosure presented is pursuant to General Instruction II.D of this Form and instruction 1.D below, the disclosure may be in solely narrative rather than substantially tabular form.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities ..	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b)											
Fee Offset Claims ...		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims ...	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are being initially registered, choose a security type permitted to be registered on this form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Maximum Aggregate Amounts and Offering Prices in Connection with Post-Effective Amendments.

If required by General Instruction II.D of this Form, provide in narrative format the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment relates. With respect to final

prospectuses, see Rule 424(g)(2) (§ 230.424(g)(2) of this chapter).

E. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 (§ 230.457 of this chapter) and any other rule being relied upon. All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds except the narrative disclosure referenced in Instruction 1.D must appear directly beneath the heading of this exhibit if the exhibit does not otherwise require a table.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment.

b. Fees Previously Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) (§ 230.457(a) of this chapter), enter ''457(a)''.

b. Rule 457(o).

If relying on Rule 457(o) under the Securities Act (§ 230.457(o) of this chapter) to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. You may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

c. Rule 457(s).

If relying on Rule 456(c) and Rule 457(s) under the Securities Act (§§ 230.456(c) and 230.457(s) of this chapter) to defer a fee, enter ''457(s)'' and *see* Instruction 2.A.iii.b.

d. Other.

If relying on a rule other than Rule 457(a), (o), or (s), enter ''Other''.

iii. Other Tabular Information.

a. Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable except as otherwise provided by Instruction 2.A.iii.b:

1. The security type of the class of securities to be registered;

2. The title of the class of securities to be registered;

3. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

4. The fee rate; and

5. The registration fee.

b. Where securities are being registered on this Form SF–3, Rule 456(c) under the Securities Act (§ 230.456(c) of this chapter) permits, but does not require, the registrant to pay the registration fee on a pay-as-you-go basis, and Rule 457(s) under the Securities Act (§ 230.457(s) of this chapter) permits, but does not require, the registration fee to be calculated on the basis of the aggregate offering price of the securities to be offered in an offering or offerings off the registration statement. If a registrant elects to pay all or a portion of the registration fee on a deferred basis, Table 1 must cite Rule 457(s), as required by Instruction 2.A.ii.c, and identify the classes of securities being registered, in tandem with their respective security types, and the registrant must state, in response to this instruction, that it elects to rely on Securities Act Rules 456(c) and 457(s), but Table 1 does not need to specify any other information with respect to those classes of securities. When the issuer amends Table 1 in accordance with Rule 456(c)(1)(ii) (§ 230.456(c)(1)(ii) of this chapter), the amended Table 1 must include either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities referenced in the offerings and the applicable registration fee.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this form or a pre-effective amendment for purposes of Table 1. If you use this recalculation procedure, separately disclose that you are using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act (§ 230.415(a)(6) of this chapter) to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

i. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

ii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

iii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

iv. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act (§ 230.457(b) or (p) of this chapter) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rule 457(b).

If relying on Rule 457(b) under the Securities Act (§ 230.457(b) of this chapter) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form SF–3 unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rule 457(b)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rule 457(b)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b).

C. Rule 457(p).

If relying on Rule 457(p) under the Securities Act (§ 230.457(p) of this chapter) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the registrant is claiming a filing fee offset, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If you were not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that you are that registrant's successor, majority-owned subsidiary, parent owning more than 50% of the registrant's outstanding voting securities, or other registrant eligible to claim a filing fee offset. See the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act (§ 230.405 of this chapter).

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form S–1 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form S–1 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form S–1 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000.

One example could be:

- The Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment

of $25,000 made with that submission; and

• the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–1 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act of 1933 (§ 230.429 of this chapter), provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus, must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'').

Note to Instruction 4.

Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 29. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 30. Effective May 31, 2022, revise § 240.0–9 to read as follows:

§ 240.0–9 Payment of filing fees.

All payment of filing fees shall be made by wire transfer, debit card, or credit card or via the Automated Clearing House Network. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

■ 31. Amend § 240.0–11 by revising paragraphs (a)(2), (a)(5), (b) introductory text, (c)(1) introductory text, (c)(2) introductory text, and (d) to read as follows:

§ 240.0–11 Filing fees for certain acquisitions, dispositions and similar transactions.

(a) * * *

(2) A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to either section 6(b) of the Securities Act of 1933 or any applicable provision of this section; the fee requirements under section 6(b) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this section. No part of a filing fee is refundable.

* * * * *

(5) An exhibit to the filing shall set forth the calculation of the fee in tabular format, as well as the amount offset by a previous filing and the identification of such filing, if applicable.

(b) *Section 13(e)(1) filings.* At the time of filing such statement as the Commission may require pursuant to section 13(e)(1) of the Exchange Act, a fee equal to the product of the rate applicable under section 13(e) of the Exchange Act multiplied by the value of the securities proposed to be acquired by the acquiring person. The value of the securities proposed to be acquired shall be determined as follows:

* * * * *

(c) * * *

(1) For preliminary material involving a vote upon a merger, consolidation or acquisition of a company, a fee equal to the product of the rate applicable under section 14(g) of the Exchange Act multiplied by the proposed cash payment or, if the consideration does not consistent entirely of cash, the value of the securities and other property to be transferred to security holders in the transaction. The fee is payable whether the registrant is acquiring another company or being acquired.

* * * * *

(2) For preliminary material involving a vote upon a proposed sale or other disposition of substantially all the assets of the registrant, a fee equal to the product of the rate applicable under section 14(g) of the Exchange Act multiplied by the aggregate of, as applicable, the cash and the value of the securities (other than its own) and other property to be received by the registrant. In the case of a disposition in which the registrant will not receive any property, such as at liquidation or spin-off, the fee shall be equal to the product of the rate applicable under section 14(g) of the Exchange Act multiplied by the aggregate of, as applicable, the cash and the value of the securities and other property to be distributed to security holders.

* * * * *

(d) *Section 14(d)(1) filings.* At the time of filing such statement as the Commission may require pursuant to section 14(d)(1) of the Act, a fee equal to the product of the rate applicable under section 14(g) of the Exchange Act multiplied by the cash or, if the consideration does not consist entirely of cash, the value of the securities and other property offered by the bidder. Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based upon the market value of the securities to be received by the bidder as established in accordance with paragraph (a)(4) of this section.

■ 32. Amend § 240.13e-1 by:

■ a. Removing the word ''and'' at the end of paragraph (a)(5);

■ b. Adding paragraph (a)(7);

■ c. Revising paragraph (b);

■ d. Redesignating paragraph (c) as paragraph (d); and

■ e. Adding a new paragraph (c).

The additions and revision read as follows:

§ 240.13e–1 Purchase of securities by the issuer during a third-party tender offer.

* * * * *

(a) * * *

(7) An exhibit to the statement that sets forth the transaction valuation, fee

rate, amount of filing fee and, as applicable, information relating to reliance on § 240.0–11(a)(2) in the tabular form indicated in Tables 1 and 2 to this paragraph (a)(7) and as further specified in this paragraph (a)(7).

TABLE 1 TO PARAGRAPH (a)(7)

	Transaction valuation	Fee rate	Amount of filing fee
Fees to Be Paid	X	X	X
Fees Previously Paid	X		X
Total Transaction Valuation	X		
Total Fees Due for Filing			X
Total Fees Previously Paid			X
Total Fee Offsets			X
Net Fee Due			X

TABLE 2 TO PARAGRAPH (a)(7)

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Fee paid with fee offset source
Fee Offset Claims		X	X	X		X	
Fee Offset Sources	X	X	X		X		X

(i) *General requirements*—(A) *Applicable table requirements.* The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

(B) *Fee rate.* For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

(C) *Explanations.* If not otherwise explained in response to this paragraph (a)(7), disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the applicable provisions of § 240.0–11 (Rule 0–11). All disclosure this paragraph (a)(7) requires that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

(ii) *Table 1 to this paragraph (a)(7)*—(A) *Fees to be paid and fees previously paid*—(*1*) *Fees to be paid.* Provide the information Table 1 to this paragraph (a)(7) requires for the line item ''Fees to Be Paid'' as follows:

(*i*) *Initial filings.* For an initial filing on the statement, provide the required information for the total transaction valuation.

(*ii*) *Amendments with then-current total transaction valuation higher than highest total transaction valuation previously reported.* For amendments to the statement that reflect a then-current total transaction valuation higher than the highest total transaction valuation previously reported, provide the required information for the incremental increase.

(*2*) *Fees previously paid.* Provide the information Table 1 to this paragraph (a)(7) requires for the line item ''Fees Previously Paid'' for the prior initial filing or amendment to the statement that reflected a then-current total transaction valuation that was the highest total transaction valuation previously reported.

(B) *Other tabular information.* Provide the following information in Table 1 to this paragraph (a)(7) for the line items ''Fees to be Paid'' and ''Fees Previously Paid'', as applicable:

(*1*) The transaction valuation computed pursuant to Rule 0–11;

(*2*) The fee rate; and

(*3*) The filing fee due without regard to any previous payments or offsets.

(C) *Totals*—(*1*) *Total transaction valuation.* Provide the sum of the transaction valuations for the line items ''Fees to be Paid'' and ''Fees Previously Paid''.

(*2*) *Total fees due for filing.* Provide the sum of the fees due without regard to any previous payments or offsets for the line items ''Fees to be Paid'' and ''Fees Previously Paid.''

(*3*) *Total fees previously paid.* Provide the aggregate of filing fees previously paid with this filing.

(*4*) *Total fee offsets.* Provide the aggregate of the fee offsets that are claimed in Table 2 to this paragraph (a)(7) pursuant to paragraph (a)(7)(iii) of this section.

(*5*) *Net fee due.* Provide the difference between:

(*i*) The total fees due for the statement from the ''Total Fees Due for Filing'' row; and

(*ii*) The sum of the aggregate of filing fees previously paid from the ''Total Fees Previously Paid'' row; and the aggregate fee offsets claimed from the ''Total Fee Offsets'' row.

(D) *Narrative disclosure.* Explain how the transaction valuation was determined.

(iii) *Table 2 to this paragraph (a)(7)*—(A) *Terminology.* For purposes of this paragraph (a)(7)(iii) and Table 2 to this paragraph (a)(7):

(*1*) The term *submission* means any:

(*i*) Initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or

(*ii*) Fee-bearing form of prospectus filed under § 230.424 of this chapter (Rule 424 under the Securities Act), in all cases that was accompanied by a contemporaneous fee payment.

Note 1 to paragraph (a)(7)(iii)(A). For purposes of this paragraph (a)(7)(iii), a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Paragraph (a)(7)(iii)(B)(*2*) of this section requires a filer that claims a fee offset under Rule 0–11(a)(2) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this

filing can be traced. *See* Instruction 3.C to the Calculation of Filing Fee Tables in Item 16(b) of § 240.13e–100 (Schedule 13E–3) for an example.

(B) *Rule 0–11(a)(2).* If relying on Rule 0–11(a)(2) to offset some or all of the filing fee due on the statement by amounts paid in connection with earlier filings (other than the statement) relating to the same transaction, provide the following information:

(*1*) *Fee offset claims.* For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 to this paragraph (a)(7) requires for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note 2 to paragraph (a)(7)(iii)(B)(*1*). If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

(*2*) *Fee offset sources.* With respect to amounts claimed as an offset under Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 to this paragraph (a)(7) requires for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 0–11(a)(2).

(b) Pays the fee required by § 240.0–11 when it files the initial statement and any amendment with respect to which an additional fee is due.

(c) Submits to the Commission the exhibit required by paragraph (a)(7) of this section as required by § 232.408 of this chapter (Rule 408 of Regulation S–T).

* * * * *

■ 33. Amend § 240.13e–100 by:

■ a. Removing the text between ''Check the following box if the filing is a final amendment reporting the results of the transaction [ ]'' and the heading ''General Instructions'';

■ b. Revising paragraph B of the General Instructions; and

■ c. Revising Item 16.

The revisions read as follows:

§ 240.13e–100 Schedule 13E–3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e–3 (§ 240.13e–3) thereunder.

* * * * *

General Instructions:

* * * * *

B. This filing must be accompanied by a fee payable to the Commission as required by § 240.0–11(b). The filing fee exhibit required by Item 16(b) of this schedule must be submitted as required by Rule 408 of Regulation S–T (§ 232.408 of this chapter).

* * * * *

Item 16. Exhibits

File each of the following as an exhibit to the Schedule:

(a) All documents specified in Item 1016(a) through (d), (f) and (g) of Regulation M–A (§ 229.1016 of this chapter); and

(b) The transaction valuation, fee rate, amount of filing fee and, as applicable, information relating to reliance on § 240.0–11(a)(2) in the tabular form indicated.

Calculation of Filing Fee Tables

TABLE 1—TRANSACTION VALUATION

	Transaction valuation	Fee rate	Amount of filing fee
Fees to Be Paid	X	X	X
Fees Previously Paid	X		X
Total Transaction Valuation	X		
Total Fees Due for Filing			X
Total Fees Previously Paid			X
Total Fee Offsets			X
Net Fee Due			X

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Fee paid with fee offset source
Fee Offset Claims		X	X	X		X	
Fee Offset Sources	X	X	X		X		X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

C. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the applicable provisions of Rule 0–11 (§ 240.0–11 of this chapter). All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

2. Table 1: Transaction Valuation Table and Related Disclosure.

A. Fees to Be Paid and Fees Previously Paid.

i. Fees to Be Paid.

Provide the information Table 1 requires for the line item ''Fees to Be Paid'' as follows:

a. Initial Filings.

For an initial filing on this schedule, provide the required information for the total transaction valuation.

b. Amendments with Then-Current Total Transaction Valuation Higher than Highest Total Transaction Valuation Previously Reported.

For amendments to this schedule that reflect a then-current total transaction valuation higher than the highest total transaction valuation previously reported, provide the required information for the incremental increase.

ii. Fees Previously Paid.

Provide the information Table 1 requires for the line item ''Fees Previously Paid'' for the prior initial filing or amendment to this transaction statement that reflected a then-current total transaction valuation that was the highest total transaction valuation previously reported.

B. Other Tabular Information.

Provide the following information in the table for the line items ''Fees to be Paid'' and ''Fees Previously Paid'', as applicable:

i. The transaction valuation computed pursuant to Exchange Act Rule 0–11;

ii. The fee rate; and

iii. The filing fee due, without regard to any previous payments or offsets.

C. Totals.

i. Total Transaction Valuation.

Provide the sum of the transaction valuations for the line items ''Fees to be Paid'' and ''Fees Previously Paid.''

ii. Total Fees Due for Filing.

Provide the sum of the fees due without regard to any previous payments or offsets for the line items ''Fees to be Paid'' and ''Fees Previously Paid.''

iii. Total Fees Previously Paid.

Provide the aggregate of filing fees previously paid with this filing.

iv. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

v. Net Fee Due.

Provide the difference between (a) the total fees due for this transaction statement from the Total Fees Due for Filing row; and (b) the sum of (i) the aggregate of filing fees previously paid from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

D. Narrative Disclosure

Explain how the transaction valuation was determined.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instruction 3.B.ii requires a filer that claims a fee offset under Rule 0–11(a)(2) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.C for an example.

B. Rule 0–11(a)(2).

If relying on Rule 0–11(a)(2) to offset some or all of the filing fee due on this transaction statement by amounts paid in connection with earlier filings (other than this Schedule 13E–3) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 0–11(a)(2).

C. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement related to a tender offer on Form S–4 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.
- Initially files a Schedule TO related to the same tender offer on 1/22/20X7 and relies on Rule 0–11(a)(2) to claim an offset of $45,000 from the fee paid directly and by offset claimed on the Form S–4 (333–123478) filed 1/15/20X7 and apply it to the $45,000 filing fee due.

For the Schedule TO filed on 1/22/20X7, the filer can satisfy the submission identification requirement when it claims the $45,000 fee offset from the Form S–4 (333–123478) filed on 1/15/20X7 by referencing any combination of the Form S–4 (333–123478) filed on 1/15/20X7, the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $45,000.

One example could be:

- The Form S–4 (333–123478) filed on 1/15/20X7 in relation to the payment of $15,000 made with that submission;
- the Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial

submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–4 (333–123478) filed on 1/15/20X7 because even though the offset claimed and available from that filing was $45,000, the contemporaneous fee payment made with that filing ($15,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $30,000 as the original source(s) to which the rest of the claimed offset can be traced.

* * * * *

■ 34. Amend § 240.13e–102 by:

■ a. Removing the text between ''(Date tender offer first published, sent or given to securityholders)'' and the heading ''General Instructions'';

■ b. Revising paragraph A.(1) under ''II. Filing Instructions and Fees''; and

■ c. Adding paragraph (4) under ''Part II—Information Not Required To Be Sent to Shareholders''.

The revision and addition read as follows:

§ 240.13e–102 Schedule 13E–4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

* * * * *

General Instructions

* * * * *

II. Filing Instructions and Fees

A.(1) The issuer must file this Schedule and any amendment to the Schedule (*see* Part I, Item 1.(b)), including all exhibits and other documents filed as part of the Schedule or amendment, in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR part 232). The filing fee exhibit required by paragraph (4) under ''Part II—Information Not Required To Be Sent to Shareholders'' must be submitted as required by Rule 408 of Regulation S–T (§ 232.408 of this chapter). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 551–8900. For assistance with the EDGAR rules, call EDGAR filer support at (202) 551–8900.

* * * * *

Part II—Information Not Required To Be Sent to Shareholders

* * * * *

(4) File the following information: The transaction valuation, fee rate, amount of filing fee and, as applicable, information relating to reliance on § 240.0–11(a)(2) in the tabular form indicated.

Calculation of Filing Fee Tables

TABLE 1—TRANSACTION VALUATION

	Transaction valuation	Fee rate	Amount of filing fee
Fees to Be Paid	X	X	X
Fees Previously Paid	X		X
Total Transaction Valuation	X		
Total Fees Due for Filing			X
Total Fees Previously Paid			X
Total Fee Offsets			X
Net Fee Due			X

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Fee paid with fee offset source
Fee Offset Claims		X	X	X		X	
Fee Offset Sources	X	X	X		X		X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

C. Additional Filing Fee Provisions.

See General Instructions II.C and D of this Schedule for additional provisions regarding filing fees.

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the applicable provisions of Rule 0–11 (§ 240.0–11 of this chapter). All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

2. Table 1: Transaction Valuation Table and Related Disclosure.

A. Fees to Be Paid and Fees Previously Paid.

i. Fees to Be Paid.

Provide the information Table 1 requires for the line item ''Fees to Be Paid'' as follows:

a. Initial Filings.

For an initial filing on this schedule, provide the required information for the total transaction valuation.

b. Amendments with Then-Current Total Transaction Valuation Higher than Highest Total Transaction Valuation Previously Reported.

For amendments to this schedule that reflect a then-current total transaction

valuation higher than the highest total transaction valuation previously reported, provide the required information for the incremental increase.

ii. Fees Previously Paid.

Provide the information Table 1 requires for the line item ''Fees Previously Paid'' for the prior initial filing or amendment to this schedule that reflected a then-current total transaction valuation that was the highest total transaction valuation previously reported.

B. Other Tabular Information.

Provide the following information in the table for the line items ''Fees to be Paid'' and ''Fees Previously Paid'', as applicable:

i. The transaction valuation computed pursuant to Exchange Act Rule 0–11;

ii. The fee rate; and

iii. The filing fee due without regard to any previous payments or offsets.

C. Totals.

i. Total Transaction Valuation.

Provide the sum of the transaction valuations for the line items ''Fees to be Paid'' and ''Fees Previously Paid''.

ii. Total Fees Due for Filing.

Provide the sum of the fees due without regard to any previous payments or offsets for the line items ''Fees to be Paid'' and ''Fees Previously Paid.''

iii. Total Fees Previously Paid.

Provide the aggregate of filing fees previously paid with this filing.

iv. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

v. Net Fee Due.

Provide the difference between (a) the total fees due for this tender offer statement from the Total Fees Due for Filing row; and (b) the sum of (i) the aggregate of filing fees previously paid from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

D. Narrative Disclosure

Explain how the transaction valuation was determined.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instruction 3.B.ii requires a filer that claims a fee offset under Rule 0–11(a)(2) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.C for an example.

B. Rule 0–11(a)(2).

If relying on Rule 0–11(a)(2) to offset some or all of the filing fee due on this tender offer statement by amounts paid in connection with earlier filings (other than this Schedule 13E–4F) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 0–11(a)(2).

C. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement related to a tender offer on Form S–4 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.
- Initially files a Schedule TO related to the same tender offer on 1/22/20X7 and relies on Rule 0–11(a)(2) to claim an offset of $45,000 from the fee paid directly and by offset claimed on the Form S–4 (333–123478) filed 1/15/20X7 and apply it to the $45,000 filing fee due.

For the Schedule TO filed on 1/22/20X7, the filer can satisfy the submission identification requirement when it claims the $45,000 fee offset from the Form S–4 (333–123478) filed on 1/15/20X7 by referencing any combination of the Form S–4 (333–123478) filed on 1/15/20X7, the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $45,000. One example could be:

- The Form S–4 (333–123478) filed on 1/15/20X7 in relation to the payment of $15,000 made with that submission;
- the Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–4 (333–123478) filed on 1/15/20X7 because even though the offset claimed and available from that filing was $45,000, the contemporaneous fee payment made with that filing ($15,000) was less than the offset being claimed.

As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $30,000 as the original source(s) to which the rest of the claimed offset can be traced.

* * * * *

■ 35. Amend § 240.14a–101 by:
■ a. Revising the text between ''(Name of Person(s) Filing Proxy Statement, if other than the Registrant)'' and the heading ''Notes''; and
■ b. Revising Item 25.

The revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check all boxes that apply):

[ ] No fee required

[ ] Fee paid previously with preliminary materials

[ ] Fee computed on table in exhibit required by Item 25(b) per Exchange Act Rules 14a–6(i)(1) and 0–11

Notes

* * * * *

Item 25. Exhibits. Provide each of the following in an exhibit to this Schedule 14A:

(a) The legal opinion required to be filed by Item 402(u)(4)(i) of Regulation S–K (17 CFR 229.402(u)); and

(b) If a fee is required, the title of each class of securities to which the transaction applies, aggregate number of securities to which the transaction applies, per unit price or other underlying value of the transaction computed pursuant to § 240.0–11, proposed maximum aggregate value of the transaction, fee rate, amount of filing fee and, as applicable, information relating to reliance on § 240.0–11(a)(2) in the tabular form indicated.

Registered funds that must pay registration fees using Form 24F–2 (§ 274.24) are not required to respond to this Item.

Calculation of Filing Fee Tables

TABLE 1—TRANSACTION VALUATION

	Proposed maximum aggregate value of transaction	Fee rate	Amount of filing fee
Fees to Be Paid	X	X	X
Fees Previously Paid	X		X
Total Transaction Valuation	X		
Total Fees Due for Filing			X
Total Fees Previously Paid			X
Total Fee Offsets			X
Net Fee Due			X

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Fee paid with fee offset source
Fee Offset Claims		X	X	X		X	
Fee Offset Sources	X	X	X		X		X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

C. Explanations.

Disclose the (i) title of each class of securities to which the transaction applies; (ii) aggregate number of securities to which the transaction apples; and (iii) per unit price or other underlying value of the transaction computed pursuant to Exchange Act Rule 0–11 (set forth the amount on which the filing fee is calculated and state how it was determined). If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the applicable provisions of Rule 0–11 (§ 240.0–11 of this chapter). All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

D. Submission Method.

If a filing fee exhibit is required to be provided pursuant to this Item 25(b), it must be submitted as required by Rule 408 of Regulation S–T (§ 232.408 of this chapter).

2. Table 1: Transaction Valuation Table and Related Disclosure.

A. Fees to Be Paid and Fees Previously Paid.

i. Fees to Be Paid.

Provide the information Table 1 requires for the line item ''Fees to Be Paid'' as follows:

c. Initial Filings.

For an initial filing on this schedule, provide the required information for the total transaction valuation.

d. Amendments with Then-Current Total Transaction Valuation Higher than Highest Total Transaction Valuation Previously Reported.

For amendments to this schedule that reflect a then-current total transaction valuation higher than the highest total transaction valuation previously reported, provide the required information for the incremental increase.

ii. Fees Previously Paid.

Provide the information Table 1 requires for the line item ''Fees Previously Paid'' for the prior initial filing or amendment to this schedule that reflected a then-current total transaction valuation that was the highest total transaction valuation previously reported.

B. Other Tabular Information.

Provide the following information in the table for the line items ''Fees to be Paid'' and ''Fees Previously Paid'', as applicable:

i. The proposed maximum aggregate value of the transaction computed pursuant to Exchange Act Rule 0–11;

ii. The fee rate; and

iii. The filing fee due without regard to any previous payments or offsets.

C. Totals.

i. Total Transaction Valuation.

Provide the sum of the proposed maximum aggregate values for the line items ''Fees to Be Paid'' and ''Fees Previously Paid''.

ii. Total Fees Due for Filing.

Provide the sum of the fees due without regard to any previous payments or offsets for the line items ''Fees to be Paid'' and ''Fees Previously Paid.''

iii. Total Fees Previously Paid.

Provide the aggregate of filing fees previously paid with this filing.

iv. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

v. Net Fee Due.

Provide the difference between (a) the total fees due for this schedule from the Total Fees Due for Filing row; and (b) the sum of (i) the aggregate of filing fees previously paid from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

D. Narrative Disclosure.

Explain how the transaction valuation was determined.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instruction 3.B.ii requires a filer that claims a fee offset under Rule 0–11(a)(2) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.C for an example.

B. Rule 0–11(a)(2).

If relying on Rule 0–11(a)(2) to offset some or all of the filing fee due on this schedule by amounts paid in connection with earlier filings (other than this Schedule 14A) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 0–11(a)(2).

C. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement related to a tender offer on Form S–4 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.
- Initially files a Schedule TO related to the same tender offer on 1/22/20X7 and relies on Rule 0–11(a)(2) to claim an offset of $45,000 from the fee paid directly and by offset claimed on the Form S–4 (333–123478) filed 1/15/20X7 and apply it to the $45,000 filing fee due.

For the Schedule TO filed on 1/22/20X7, the filer can satisfy the submission identification requirement when it claims the $45,000 fee offset from the Form S–4 (333–123478) filed on 1/15/20X7 by referencing any combination of the Form S–4 (333–123478) filed on 1/15/20X7, the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $45,000. One example could be:

- The Form S–4 (333–123478) filed on 1/15/20X7 in relation to the payment of $15,000 made with that submission;
- the Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–4 (333–123478) filed on 1/15/20X7 because even though the offset claimed and available from that filing was $45,000, the contemporaneous fee payment made with that filing ($15,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $30,000 as the original

source(s) to which the rest of the claimed offset can be traced.

■ 36. Amend § 240.14c–101 by revising the text between ''(Name of Registrant As Specified In Its Charter)'' and the heading ''Note'' to read as follows:

§ 240.14c–101 Schedule 14C. Information required in information statement.

* * * * *

(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check all boxes that apply):

[ ] No fee required

[ ] Fee paid previously with preliminary materials

[ ] Fee computed on table in exhibit required by Item 25(b) of Schedule 14A (17 CFR 240.14a–101) per Item 1 of this Schedule and Exchange Act Rules 14c–5(g) and 0–11

Note

* * * * *

■ 37. Amend § 240.14d-100 by:

■ a. Removing the text between ''(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)'' and ''[ ] Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer''; and

■ b. Revising Item 12.

The revision reads as follows:

§ 240.14d-100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

* * * * *

Item 12. Exhibits

File each of the following as an exhibit to the Schedule:

(a) All documents specified in Item 1016(a), (b), (d), (g) and (h) of Regulation M–A (§ 229.1016 of this chapter); and

(b) The transaction valuation, fee rate, amount of filing fee and, as applicable, information relating to reliance on § 240.0–11(a)(2) in the tabular form indicated.

Calculation of Filing Fee Tables

TABLE 1—TRANSACTION VALUATION

	Transaction valuation	Fee rate	Amount of filing fee
Fees to Be Paid	X	X	X
Fees Previously Paid	X		X
Total Transaction Valuation	X		
Total Fees Due for Filing			X
Total Fees Previously Paid			X
Total Fee Offsets			X
Net Fee Due			X

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Fee paid with fee offset source
Fee Offset Claims		X	X	X		X	
Fee Offset Sources	X	X	X		X		X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

C. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the applicable provisions of Rule 0–11 (§ 240.0–11 of this chapter). All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

D. Submission Method.

If a filing fee exhibit is required to be provided pursuant to this Item 12(b), it must be submitted as required by Rule 408 of Regulation S–T (§ 232.408 of this chapter).

2. Table 1: Transaction Valuation Table and Related Disclosure.

A. Fees to Be Paid and Fees Previously Paid.

i. Fees to Be Paid.

Provide the information Table 1 requires for the line item ''Fees to Be Paid'' as follows:

a. Initial Filings.

For an initial filing on this schedule, provide the required information for the total transaction valuation.

b. Amendments with Then-Current Total Transaction Valuation Higher than Highest Total Transaction Valuation Previously Reported. For amendments to this schedule that reflect a then-current total transaction valuation higher than the highest total transaction valuation previously reported, provide the required information for the incremental increase.

ii. Fees Previously Paid.

Provide the information Table 1 requires for the line item ''Fees Previously Paid'' for the prior initial filing or amendment to this schedule that reflected a then-current total transaction valuation that was the highest total transaction valuation previously reported.

B. Other Tabular Information.

Provide the following information in the table for the line items ''Fees to Be Paid'' and ''Fees Previously Paid'', as applicable:

i. The transaction valuation computed pursuant to Exchange Act Rule 0–11;

ii. The fee rate; and

iii. The filing fee due without regard to any previous payments or offsets.

C. Totals.

i. Total Transaction Valuation.

Provide the sum of the transaction valuations for the line items ''Fees to Be Paid'' and ''Fees Previously Paid.''

ii. Total Fees Due for Filing.

Provide the sum of the fees due without regard to any previous payments or offsets for the line items ''Fees to Be Paid'' and ''Fees Previously Paid.''

iii. Total Fees Previously Paid.

Provide the aggregate of filing fees previously paid with this filing.

iv. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

v. Net Fee Due.

Provide the difference between (a) the total fees due for this schedule from the Total Fees Due for Filing row; and (b) the sum of (i) the aggregate of filing fees previously paid from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

D. Narrative Disclosure.

Explain how the transaction valuation was determined.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instruction 3.B.ii requires a filer that claims a fee offset under Rule 0–11(a)(2) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.C for an example.

B. Rule 0–11(a)(2).

If relying on Rule 0–11(a)(2) to offset some or all of the filing fee due on this tender offer statement by amounts paid in connection with earlier filings (other than this Schedule TO) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 0–11(a)(2).

C. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement related to a tender offer on Form S–4 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.
- Initially files a Schedule TO related to the same tender offer on 1/22/20X7 and relies on Rule 0–11(a)(2) to claim an offset of $45,000 from the fee paid directly and by offset claimed on the Form S–4 (333–123478) filed 1/15/20X7 and apply it to the $45,000 filing fee due.

For the Schedule TO filed on 1/22/20X7, the filer can satisfy the submission identification requirement when it claims the $45,000 fee offset from the Form S–4 (333–123478) filed on 1/15/20X7 by referencing any combination of the Form S–4 (333–123478) filed on 1/15/20X7, the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $45,000.

One example could be:

- The Form S–4 (333–123478) filed on 1/15/20X7 in relation to the payment of $15,000 made with that submission;
- the Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–4 (333–123478) filed on 1/15/20X7 because even though the offset claimed and available from that filing was $45,000, the contemporaneous fee payment made with that filing ($15,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $30,000 as the original source(s) to which the rest of the claimed offset can be traced.

* * * * *

■ 38. Amend § 240.14d–102 by:

■ a. Removing the text between ''(Date tender offer first published, sent or given to securityholders)'' and the heading ''General Instructions''; and

■ b. Adding paragraph (4) under ''Part II—Information Not Required To Be Sent To Shareholders.''

The addition reads as follows:

§ 240.14d-102 Schedule 14D–1F. Tender offer statement pursuant to rule 14d-1(b) under the Securities Exchange Act of 1934.

* * * * *

Part II—Information Not Required To Be Sent to Shareholders

* * * * *

(4) File the following information: The transaction valuation, fee rate, amount of filing fee and, as applicable, information relating to reliance on § 240.0–11(a)(2) in the tabular form indicated.

Calculation of Filing Fee Tables

TABLE 1—TRANSACTION VALUATION

	Transaction valuation	Fee rate	Amount of filing fee
Fees to Be Paid	X	X	X
Fees Previously Paid	X		X
Total Transaction Valuation	X		
Total Fees Due for Filing			X
Total Fees Previously Paid			X
Total Fee Offsets			X
Net Fee Due			X

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Fee paid with fee offset source
Fee Offset Claims		X	X	X		X	
Fee Offset Sources	X	X	X		X		X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure (''Instructions''):

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

C. Additional Filing Fee Provisions.

See General Instructions II.C and D for additional provisions regarding filing fees.

D. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the applicable provisions of Rule 0–11 (§ 240.0–11 of this chapter). All disclosure these Instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

E. Submission Method.

A filing fee exhibit required to be provided pursuant to this paragraph (4) under ''Part II—Information Not Required To Be Sent To Shareholders'' must be submitted as required by Rule 408 of Regulation S–T (§ 232.408 of this chapter).

2. Table 1: Transaction Valuation Table and Related Disclosure.

A. Fees to Be Paid and Fees Previously Paid.

i. Fees to Be Paid.

Provide the information Table 1 requires for the line item ''Fees to Be Paid'' as follows:

a. Initial Filings.

For an initial filing on this schedule, provide the required information for the total transaction valuation.

b. Amendments with Then-Current Total Transaction Valuation Higher than Highest Total Transaction Valuation Previously Reported. For amendments to this schedule that reflect a then-current total transaction valuation higher than the highest total transaction valuation previously reported, provide the required information for the incremental increase.

ii. Fees Previously Paid.

Provide the information Table 1 requires for the line item ''Fees Previously Paid'' for the prior initial filing or amendment to this schedule that reflected a then-current total transaction valuation that was the highest total transaction valuation previously reported.

B. Other Tabular Information.

Provide the following information in the table for the line items ''Fees to be Paid'' and ''Fees Previously Paid'':

i. The transaction valuation computed pursuant to Exchange Act Rule 0–11;

ii. The fee rate; and

iii. The filing fee due without regard to any previous payments or offsets.

C. Totals.

i. Total Transaction Valuation.

Provide the sum of the transaction valuations for the line items ''Fees to be Paid'' and ''Fees Previously Paid.''

ii. Total Fees Due for Filing.

Provide the sum of the fees due without regard to any previous payments or offsets for the line items ''Fees to be Paid'' and ''Fees Previously Paid.''

iii. Total Fees Previously Paid.

Provide the aggregate of filing fees previously paid with this filing.

iv. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

v. Net Fee Due.

Provide the difference between (a) the total fees due for this schedule from the Total Fees Due for Filing row; and (b) the sum of (i) the aggregate of filing fees previously paid from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

D. Narrative Disclosure.

Explain how the transaction valuation was determined.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment

(pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act (§ 230.424 of this chapter), in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instruction 3.B.ii requires a filer that claims a fee offset under Rule 0–11(a)(2) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.C for an example.

B. Rule 0–11(a)(2).

If relying on Rule 0–11(a)(2) to offset some or all of the filing fee due on this tender offer statement by amounts paid in connection with earlier filings (other than this Schedule 14D–1F) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i.

If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 0–11(a)(2).

C. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form S–1 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form S–1 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form S–1 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form S–1 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement related to a tender offer on Form S–4 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities registered on the most recently effective Form S–1 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.
- Initially files a Schedule TO related to the same tender offer on 1/22/20X7 and relies on Rule 0–11(a)(2) to claim an offset of $45,000 from the fee paid directly and by offset claimed on the Form S–4 (333–123478) filed 1/15/20X7 and apply it to the $45,000 filing fee due.

For the Schedule TO filed on 1/22/20X7, the filer can satisfy the submission identification requirement when it claims the $45,000 fee offset from the Form S–4 (333–123478) filed on 1/15/20X7 by referencing any combination of the Form S–4 (333–123478) filed on 1/15/20X7, the Form S–1 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 or the initial filing of the Form S–1 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $45,000.

One example could be:

- the Form S–4 (333–123478) filed on 1/15/20X7 in relation to the payment of $15,000 made with that submission;
- the Form S–1 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the Form S–1 (333–123456) filed on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form S–1 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form S–4 (333–123478) filed on 1/15/20X7 because even though the offset claimed and available from that filing was $45,000, the contemporaneous fee payment made with that filing ($15,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $30,000 as the original source(s) to which the rest of the claimed offset can be traced.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 39. The general authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 40. Effective May 31, 2022, revise § 270.0–8 to read as follows:

§ 270.0–8 Payment of filing fees.

All payment of filing fees shall be made by wire transfer, debit card, credit card, or via the Automated Clearing House Network. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 41. The general authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37, unless otherwise noted.

* * * * *

■ 42. Amend Form N–2 (referenced in §§ 239.14 and 274.11a-1) by:

■ a. Removing the ''Calculation of Registration Fee'' table and the instructions that immediately follow it;

■ b. Revising the paragraphs that immediately follow sub-paragraph A.2.c of ''A. Use of Form N–2'' under the General Instructions;

■ c. Revising the Note to General Instruction B of ''B. Automatic Shelf Offerings by Well-Known Seasoned Issuers'' under the General Instructions;

■ d. Revising ''C. Registration Fees'' under the General Instructions;

■ e. Revising sub-paragraph 4 of ''E. Amendments'' under the General Instructions;
■ f. Revising sub-paragraph 3 of ''G. Documents Composing the Registration Statement or Amendment'' under the General Instructions;
■ g. In ''I. Interactive Data Files'' under the General Instructions, revising the heading, redesignating sub-paragraph 4 as sub-paragraph 5, adding new sub-paragraph 4, and revising newly redesignated sub-paragraph 5;
■ h. Revising paragraph J of ''J. Registration of Additional Securities'' under the General Instructions;
■ i. Revising Item 1.1.e;
■ j. In Item 3, revising the Instruction to Item 3.2;
■ k. In Item 8, revising Instruction 3 to Item 8.6.c;
■ l. Revising Item 10.6 and Instruction 1 to Item 10;
■ m. Revising the introductory text of Item 25.2;
■ n. Adding Item 25.2.s; and
■ o. Revising the General Instructions to Item 25.2.

The revisions and addition read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

United States Securities and Exchange Commission

Washington, DC 20549

Form N–2

Registration Statement Under the Securities Act of 1933 and/or Registration Statement Under the Investment Company Act of 1940

* * * * *

Instructions.

If the registration statement or amendment is filed under only one of the Acts, omit reference to the other Act from the facing sheet. Include the ''Approximate Date of Commencement of Proposed Public Offering'' only where shares are being registered under the Securities Act.

Fill in the 811-____, 814-____ and 33-____ blanks only if these filing numbers (for the Investment Company Act registration and/or the Securities Act registration, respectively) have already been assigned by the Securities and Exchange Commission (''Commission'').

Form N–2 is to be used by closed-end management investment companies, except small business investment companies licensed as such by the United States Small Business Administration, to register under the Investment Company Act and to offer their shares under the Securities Act. The Commission has designed Form N–2 to provide investors with information that will assist them in making a decision about investing in an investment company eligible to use the Form. The Commission also may use the information provided on Form N–2 in its regulatory, disclosure review, inspection, and policy making roles.

A Registrant is required to disclose the information specified by Form N–2, and the Commission will make this information public. A Registrant is not required to respond to the collection of information contained in Form N–2 unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

* * * * *

General Instructions

A. * * *
2. * * *
c. * * *

A registration statement filed pursuant to this instruction shall specifically incorporate by reference into the prospectus and Statement of Additional Information (''SAI'') all of the materials specified in General Instruction F.3, pursuant to the requirements set forth in that instruction.

A Registrant must indicate that the registration statement is being filed pursuant to this instruction by checking the appropriate box on the facing sheet.

Note to General Instruction A.2. Attention is directed to the General Instructions of Form S–3, including General Instructions II.F (Information in Automatic and Non-Automatic Shelf Registration Statements), and G (Selling Security Holder Offerings).

* * * * *

B. * * *

Note to General Instruction B. Attention is directed to the General Instructions of Form S–3, including General Instructions II.F (Information in Automatic and Non-Automatic Shelf Registration Statements), G (Selling Security Holder Offerings), and IV (Registration of Additional Securities and Additional Classes of Securities).

* * * * *

C. Registration Fees

1. Section 6(b) of the Securities Act and Rule 457 [17 CFR 230.457] thereunder set forth the fee requirements under the Securities Act. Where securities are being registered on this Form, furnish the filing fee exhibit required by Item 25.2.s, unless payment will be provided using Form 24F–2 [17 CFR 274.24]. Interval funds, which are required to pay registration fees on an annual net basis pursuant to Rule 24f-2 under the Investment Company Act using Form 24F–2, should not furnish the exhibit or provide filing fee disclosure on this Form.

2. Where securities are being registered on this Form pursuant to General Instruction A.2, each post-effective amendment or final prospectus filed pursuant to Rule 424(b), in either case filed to provide required information about a specific transaction, must include in the filing fee exhibit required by Item 25.2.s or Rule 424(g), respectively, the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment or prospectus relates, and each such prospectus must indicate in such exhibit that it is a final prospectus for the related offering.

Note to General Instruction C.2. Attention is directed to the General Instructions of Form S–3, including General Instruction II.F (Information in Automatic and Non-Automatic Shelf Registration Statements).

* * * * *

E. * * *

4. A post-effective amendment to a registration statement on this Form, or a registration statement filed for the purpose of registering additional shares of common stock for which a registration statement filed on this Form is effective, filed on behalf of an interval fund or a Registrant that makes a continuous offering of securities pursuant to Rule 415(a)(1)(ix) under the Securities Act may become effective automatically in accordance with Rule 486 under the Securities Act [17 CFR 230.486], as applicable. In accordance with Rule 429 under the Securities Act [17 CFR 230.429], a Registrant filing a new registration statement for the purpose of registering additional shares of common stock may use a prospectus with respect to the additional shares also in connection with the shares covered by earlier registration statements if such prospectus includes all of the information which would currently be required in a prospectus relating to the securities covered by the earlier statements.

* * * * *

G. * * *

3. A registration statement or an amendment to it that is filed under only

the Investment Company Act shall consist of the facing sheet of the Form, responses to all items of Parts A and B except Items 1, 2, 3.2, 4, 5, 6, and 7 of Part A, responses to all items of Part C except Items 25.2.h, 25.2.*l,* 25.2.n, 25.2.o, and 25.2.s, required signatures, and all other documents that are required or which the Registrant may file as part of the registration statement.

* * * * *

I. Interactive Data

* * * * *

4. The filing fee exhibit required by Item 25.2.s of this Form must be submitted to the Commission as required by Rule 408 of Regulation S–T [17 CFR 232.408].

5. All interactive data must be submitted in accordance with the specifications in the EDGAR Filer Manual, and must be submitted in such a manner that—for any information that does not relate to all of the classes of a Registrant —will permit each class of the Registrant to be separately identified.

* * * * *

J. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act [17 CFR 230.462], the Registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions, consents, and filing fee-related information; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A [17 CFR 230.430A] that the Registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). *See* Rules 411(c), 439(b), and 483(c) under the Securities Act.

* * * * *

Part A—INFORMATION REQUIRED IN A PROSPECTUS

Item 1. * * *

1. * * *

e. the date of the prospectus and the date of the SAI;

* * * * *

Item 3. * * *

2. * * *

Instruction. The synopsis should provide a clear and concise description of the key features of the offering and the Registrant, with cross-references to relevant disclosures elsewhere in the prospectus or SAI.

* * * * *

Item 8. * * *

6. * * *

c. * * *

Instructions. * * *

3. A business development company with less than one fiscal year of operations should provide its financial statements in the SAI in response to Item 24.

* * * * *

Item 10. * * *

6. Securities Ratings. If the prospectus relates to senior securities of the Registrant that have been assigned a rating by a Nationally Recognized Securities Rating Organization (''NRSRO'') and the rating is disclosed in the prospectus, briefly discuss the significance of the rating, the basis upon which ratings are issued, any conditions or guidelines imposed by the NRSRO for the Registrant to maintain the rating, and whether or not the Registrant intends, or has any contractual obligation, to comply with these conditions or guidelines. In addition, disclose the material terms of any agreement between the Registrant or any of its affiliates and the NRSRO under which the NRSRO provides such rating. If the prospectus relates to securities other than senior securities of the Registrant that have been assigned a rating by a NRSRO, the information required by this paragraph may be provided in the SAI unless the rating criteria will materially affect the investment policies of the Registrant (*e.g.,* if the rating agency establishes criteria for selection of the Registrant's portfolio securities with which the Registrant intends to comply), in which case it should be included in the prospectus.

Instructions.

1. The term ''Nationally Recognized Securities Rating Organization'' has the same meaning as used in Section 3(a)(62) of the Exchange Act.

* * * * *

Part C—Other Information

Item 25. Financial Statements and Exhibits

* * * * *

2. Exhibits.

Subject to General Instructions C (Registration Fees), F (Incorporation by Reference), and I (Interactive Data) of this Form, and Rule 483 under the Securities Act [17 CFR 230.483], file the exhibits listed below as part of the registration statement. Letter or number the exhibits in the sequence indicated, unless otherwise required by Rule 483. Reflect any exhibit incorporated by reference in the list below and identify the previously filed document containing the incorporated material.

* * * * *

s. Where securities are being registered under the Securities Act on this Form, furnish the following information, in substantially the tabular form indicated, as to each type and class of securities being registered. *Provided, however,* that if this is an exhibit to a post-effective amendment and the only disclosure presented is pursuant to General Instruction C.2 of this Form and Instruction 1.D below, the disclosure must be in solely narrative rather than substantially tabular form.

Note. Interval funds, which must pay registration fees using Form 24F–2, are not required to respond to this Item.

Calculation of Filing Fee Tables

(Form Type)

(Exact Name of Registrant as Specified in its Charter)

TABLE 1—NEWLY REGISTERED AND CARRY FORWARD SECURITIES

	Security type	Security class title	Fee calculation or carry forward rule	Amount registered	Proposed maximum offering price per unit	Maximum aggregate offering price	Fee rate	Amount of registration fee	Carry forward form type	Carry forward file number	Carry forward initial effective date	Filing fee previously paid in connection with unsold securities to be carried forward
Newly Registered Securities												
Fees to Be Paid	X	X	X	X	X	X	X	X				
Fees Previously Paid	X	X	X	X	X	X		X				
Carry Forward Securities												
Carry Forward Securities ..	X	X	X	X		X			X	X	X	X
	Total Offering Amounts					X		X				
	Total Fees Previously Paid							X				
	Total Fee Offsets							X				
	Net Fee Due							X				

TABLE 2—FEE OFFSET CLAIMS AND SOURCES

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Security type associated with fee offset claimed	Security title associated with fee offset claimed	Unsold securities associated with fee offset claimed	Unsold aggregate offering amount associated with fee offset claimed	Fee paid with fee offset source
Rules 457(b) and 0–11(a)(2)											
Fee Offset Claims ...		X	X	X		X					
Fee Offset Sources	X	X	X		X						X
Rule 457(p)											
Fee Offset Claims ...	X	X	X	X		X	X	X	X	X	
Fee Offset Sources	X	X	X		X						X

TABLE 3—COMBINED PROSPECTUSES

Security type	Security class title	Amount of securities previously registered	Maximum aggregate offering price of securities previously registered	Form type	File number	Initial effective date
X	X	X	X	X	X	X

Instructions to the Calculation of Filing Fee Tables and Related Disclosure:

1. General Requirements.

A. Applicable Table Requirements.

The ''X'' designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.

B. Security Types.

i. For securities that are initially being registered, choose a security type permitted to be registered on this Form from the following list of security types to respond to the applicable table requirement:

a. Asset-Backed Securities;

b. Debt;

c. Debt Convertible into Equity;

d. Equity;

e. Exchange-Traded Vehicle Securities;

f. Face Amount Certificates;

g. Limited Partnership Interests;

h. Mortgage Backed Securities;

i. Non-Convertible Debt;

j. Other; and

k. Unallocated (Universal) Shelf.

ii. When a table requires both security type and title of each class of securities, choose a security type from the list in Instruction 1.B.i and provide this information for each unique combination of security type and title of each class of securities. For example, it would be appropriate to provide the following on separate lines of Table 1:

Equity—Class A Preferred Shares

Equity—Class B Preferred Shares

C. Fee Rate.

For the current fee rate, *see https://www.sec.gov/ofm/Article/feeamt.html.*

D. Maximum Aggregate Amounts and Offering Prices in Connection with Post-Effective Amendments.

If required by General Instruction C.2 of this Form, provide in narrative format the maximum aggregate amount or maximum aggregate offering price of the securities to which the post-effective amendment relates. With respect to final

prospectuses, *see* Rule 424(g)(2) under the Securities Act [17 CFR 230.424(g)(2].

E. Explanations.

If not otherwise explained in response to these instructions, disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the provisions of Rule 457 under the Securities Act [17 CFR 230.457] and any other rule being relied upon. All disclosure these instructions require that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds, except the narrative disclosure referenced in Instruction 1.D must appear directly beneath the heading of this exhibit if the exhibit does not otherwise require a table.

2. Table 1: Newly Registered and Carry Forward Securities Table and Related Disclosure.

A. Newly Registered Securities.

For securities that are initially being registered on this Form, provide the following information.

i. Fees to Be Paid and Fees Previously Paid.

a. Fees to Be Paid.

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees to Be Paid'' for securities to be registered for which filing fees have not already been paid in connection with the initial filing of this Form or a pre-effective amendment.

b. Fees Previously Paid

Provide the information Table 1 requires under the heading ''Newly Registered Securities'' for the line item ''Fees Previously Paid'' for securities to be registered for which filing fees have already been paid in connection with the initial filing of this Form or a pre-effective amendment.

ii. Fee Calculation or Carry Forward Rules.

a. Rule 457(a).

For a fee calculated as specified in Rule 457(a) under the Securities Act [17 CFR 230.457(a)], enter ''457(a)''.

b. Rule 457(o).

If relying on Rule 457(o) under the Securities Act [17 CFR 230.457(o)] to register securities on this Form by maximum aggregate offering price, enter ''457(o)''. A Registrant may omit from any such row the Amount Registered and the Proposed Maximum Offering Price Per Unit.

c. Rule 457(r).

If relying on Rule 456(b) and Rule 457(r) under the Securities Act [17 CFR 230.456(b) and 230.457(r)] to defer a fee, enter ''457(r)'' and *see* Instruction 2.A.iii.c.

d. Other.

If relying on a rule other than Rule 457(a), (o), or (r), enter ''Other''.

iii. Other Tabular Information.

a. Provide the following information in the table for each unique combination of security type and title of each class of securities to be registered as applicable, except as otherwise provided by Instruction 2.A.iii.b or c:

1. The security type of the class of securities to be registered;

2. The title of the class of securities to be registered;

3. The amount of securities being registered expressed in terms of the number of securities, proposed maximum offering price per unit and resulting proposed maximum aggregate offering price, or, if the related filing fee is calculated in reliance on Rule 457(o), the proposed maximum aggregate offering price;

4. The fee rate; and

5. The registration fee.

b. When registering two or more classes of securities pursuant to General Instruction A.2 of this Form for an offering pursuant to Rule 415(a)(1)(x) under the Securities Act [17 CFR 230.415(a)(1)(x)] and where this Form is not filed by a Well-Known Seasoned Issuer that elects to defer payment of fees as permitted by Rule 456(b), Rule 457(o) permits the calculation of the registration fee to be based on the maximum aggregate offering price of all the newly registered securities listed in Table 1. In this event, Table 1 must list each of the classes of securities being registered, in tandem with its security type, but may omit the proposed maximum aggregate offering price for each class. Following that list, Table 1 must list the security type ''Unallocated (Universal) Shelf'' and state the maximum aggregate offering price for all of the classes of securities on a combined basis.

c. A Well-Known Seasoned Issuer registering securities on an automatic shelf registration statement pursuant to General Instruction A.2 of this Form may, at its option, defer payment of registration fees as permitted by Rule 456(b). If a Registrant elects to pay all or any portion of the registration fees on a deferred basis, Table 1 in the initial filing must cite Rule 457(r), as required by Instruction 2.A.ii.c, and identify the classes of securities being registered, in tandem with their respective security types, and the Registrant must state, in response to this instruction, that it elects to rely on Securities Act Rules 456(b) and 457(r), but Table 1 does not need to specify any other information with respect to those classes of securities. When the Registrant files a post-effective amendment or a prospectus in accordance with Rule 456(b)(1)(ii) to pay a deferred fee, the amended Table 1 must specify either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee, which shall be calculated based on the fee payment rate in effect on the date of the fee payment.

iv. Pre-Effective Amendments.

If a pre-effective amendment is filed to concurrently (i) increase the amount of securities of one or more registered classes or add one or more new classes of securities; and (ii) decrease the amount of securities of one or more registered classes, a registrant that did not rely on Rule 457(o) to calculate the filing fee due for the initial filing or latest pre-effective amendment to such filing may recalculate the total filing fee due for the registration statement in its entirety and claim an offset pursuant to Rule 457(b) in the amount of the filing fee previously paid in connection with the registration statement. This recalculation procedure is not available, however, if a pre-effective amendment is filed only to increase the amount of securities of one or more registered classes or add one or more new classes. A pre-effective amendment that uses this recalculation procedure must include the revised offering amounts as securities to be registered for which filing fees have not already been paid in connection with the initial filing of this Form or a pre-effective amendment for purposes of Table 1. A Registrant that uses this recalculation procedure must separately disclose that it is using it and expressly reference this Instruction 2.A.iv.

B. Carry Forward Securities.

If relying on Rule 415(a)(6) under the Securities Act [17 CFR 230.415(a)(6)] to carry forward to this registration statement unsold securities from an earlier registration statement, enter ''415(a)(6)'' in the table and provide, in a separate row for each registration statement from which securities are to be carried forward, and for each unique combination of security type and title of each class of securities to be carried forward, the following information:

i. The security type of the class of securities to be carried forward;

ii. The title of the class of securities to be carried forward;

iii. The amount of securities being carried forward expressed in terms of the number of securities (under the column heading ''Amount Registered'') and the amount of the maximum

aggregate offering price, as specified in the fee table of the earlier filing, associated with those securities (under the column heading ''Maximum Aggregate Offering Price'') or, if the related filing fee was calculated in reliance on Rule 457(o), the amount of securities carried forward expressed in terms of the maximum aggregate offering price (under the column heading ''Maximum Aggregate Offering Price'');

iv. The form type, file number, and initial effective date of the earlier registration statement from which the securities are to be carried forward; and

v. The filing fee previously paid in connection with the registration of the securities to be carried forward.

C. Totals.

vi. Total Offering Amounts.

Provide the sum of the maximum aggregate offering price for both the newly registered and carry forward securities and the aggregate registration fee for the newly registered securities.

vii. Total Fees Previously Paid.

Provide the aggregate of registration fees previously paid for the newly registered securities.

viii. Total Fee Offsets.

Provide the aggregate of the fee offsets that are claimed in Table 2 pursuant to Instruction 3.

ix. Net Fee Due.

Provide the difference between (a) the aggregate registration fee for the newly registered securities from the Total Offering Amounts row; and (b) the sum of (i) the aggregate of registration fees previously paid for the newly registered securities from the Total Fees Previously Paid row; and (ii) the aggregate fee offsets claimed from the Total Fee Offsets row.

3. Table 2: Fee Offset Claims and Sources.

A. Terminology.

For purposes of this Instruction 3 and Table 2, the term ''submission'' means any (i) initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or (ii) fee-bearing form of prospectus filed under Rule 424 under the Securities Act [17 CFR 230.424], in all cases that was accompanied by a contemporaneous fee payment. For purposes of these instructions to Table 2, a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Instructions 3.B.ii and 3.C.ii require a filer that claims a fee offset under Rule 457(b) or (p) under the Securities Act [17 CFR 230.457(b) or (p)] or Rule 0–11(a)(2) under the Exchange Act [17 CFR 240.0–11(a)(2)] to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. *See* Instruction 3.D for an example.

B. Rules 457(b) and 0–11(a)(2).

If relying on Rule 457(b) or Rule 0–11(a)(2) to offset some or all of the filing fee due on this registration statement by amounts paid in connection with earlier filings (other than this Form N–2, unless pursuant to Instruction 2.A.iv) relating to the same transaction, provide the following information:

i. Fee Offset Claims.

For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note to Instruction 3.B.i. If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(b) or Rule 0–11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 requires under the heading ''Rules 457(b) and 0–11(a)(2)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(b) or 0–11(a)(2).

C. Rule 457(p).

If relying on Rule 457(p) to offset some or all of the filing fee due on this registration statement with the filing fee previously paid for unsold securities under an earlier filed registration statement, provide the following information:

i. Fee Offset Claims.

For each such earlier filed registration statement from which the Registrant is claiming a filing fee offset provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Claims''. The ''Fee Offset Claimed'' column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Notes to Instruction 3.C.i.

1. Provide a statement that the Registrant has either withdrawn each prior registration statement or has terminated or completed any offering that included the unsold securities under the prior registration statements.

2. If the Registrant was not the registrant under the earlier registration statements, entering information under the heading ''Rule 457(p)'' pursuant to Instruction 3.C.i affirms that the Registrant is that registrant's successor, majority-owned subsidiary, or parent owning more than 50% of the registrant's outstanding voting securities eligible to claim a filing fee offset. *See* the definitions of ''successor'' and ''majority-owned subsidiary'' in Rule 405 under the Securities Act [17 CFR 230.405].

ii. Fee Offset Sources.

With respect to amounts claimed as an offset under Rule 457(p), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information Table 2 requires under the heading ''Rule 457(p)'' for the line item ''Fee Offset Sources''. The ''Fee Paid with Fee Offset Source'' column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 457(p).

D. Fee Offset Source Submission Identification Example.

A filer:

- Initially files a registration statement on Form N–2 on 1/15/20X1 (assigned file number 333–123456) with a fee payment of $10,000;
- Files pre-effective amendment number 1 to the Form N–2 (333–123456) on 2/15/20X1 with a fee payment of $15,000 and the registration statement goes effective on 2/20/20X1;
- Initially files a registration statement on Form N–2 on 1/15/20X4 (assigned file number 333–123467) with a fee payment of $25,000 and relies on Rule 457(p) to claim an offset of $10,000 related to the unsold securities registered on the previously filed Form N–2 (333–123456) and apply it to the $35,000 filing fee due and the registration statement goes effective on 2/15/20X4.
- Initially files a registration statement on Form N–2 (assigned file number 333–123478) on 1/15/20X7 with a fee payment of $15,000 and relies on Rule 457(p) to claim an offset of $30,000 related to the unsold securities

registered on the most recently effective Form N–2 (333–123467) filed on 1/15/20X4 and apply it to the $45,000 filing fee due.

For the registration statement on Form N–2 with file number 333–123478 filed on 1/15/20X7, the filer can satisfy the submission identification requirement when it claims the $30,000 fee offset from the Form N–2 (333–123467) filed on 1/15/20X4 by referencing any combination of the Form N–2 (333–123467) filed on 1/15/20X4, the pre-effective amendment to the Form N–2 (333–123456) filed on 2/15/20X1 or the initial filing of the Form N–2 (333–123456) on 1/15/20X1 in relation to which contemporaneous fee payments were made equal to $30,000.

One example could be:

- The Form N–2 (333–123467) filed on 1/15/20X4 in relation to the payment of $25,000 made with that submission; and
- the pre-effective amendment to the filing of the Form N–2 (333–123456) on 2/15/20X1 in relation to the payment of $5,000 out of the payment of $15,000 made with that submission (it would not matter if the filer cited to this pre-effective amendment and/or the initial submission of this Form N–2 (333–123456) on 1/15/20X1 as long as singly or together they were cited as relating to a total of $5,000 in this example).

In this example, the filer could not satisfy the submission identification requirement solely by citing to the Form N–2 (333–123467) filed on 1/15/20X4 because even though the offset claimed and available from that filing was $30,000, the contemporaneous fee payment made with that filing ($25,000) was less than the offset being claimed. As a result, the filer must also identify a prior submission or submissions with an aggregate of contemporaneous fee payment(s) of $5,000 as the original source(s) to which the rest of the claimed offset can be traced.

4. Table 3: Combined Prospectuses.

If this Form includes a combined prospectus pursuant to Rule 429 under the Securities Act [17 CFR 230.429], provide the information that Table 3 requires for each earlier effective registration statement that registered securities that may be offered and sold using the combined prospectus. Include a separate row for each unique combination of security type and title of each class of those securities. The amount of securities previously registered that may be offered and sold using the combined prospectus must be expressed in terms of the number of securities (under column heading ''Amount of Securities Previously Registered''), or, if the related filing fee was calculated in reliance on Rule 457(o), must be expressed in terms of the maximum aggregate offering price (under column heading ''Maximum Aggregate Offering Price of Securities Previously Registered'')''.

Note to Instruction 4. Table 1 should not include the securities registered on an earlier effective registration statement that may be offered and sold using the combined prospectus under Rule 429.

* * * * *

General Instructions.

1. Subject to the rules on incorporation by reference and Instruction 2 below, the foregoing exhibits shall be filed as a part of the registration statement. Exhibits required by paragraphs 2.h, 2.*l,* 2.n, 2.o, and 2.s above need to be filed only as part of a Securities Act registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in a previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits. The reference shall include the form, file number and date of the previous filing, and the exhibit number (*i.e.,* exhibit 2.a, 2.b, etc.) under which the exhibit was previously filed.

2. Unless required pursuant to General Instruction C of this Form, a Registrant need not file an exhibit as part of a post-effective amendment, if the exhibit has been filed in the Registrant's initial registration statement or in a previous post-effective amendment, unless there has been a change in the exhibit, or unless the exhibit is a copy of a consent required by Section 7 of the Securities Act or is a financial statement omitted from Items 8.6 or 24. The reference to this exhibit shall include the number of the previous filing (*e.g.,* pre-effective amendment No. 1) where such exhibit was filed.

3. Unless required pursuant to General Instruction C of this Form, if an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed (1) only to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b) under the Securities Act or (2) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the Registrant need not refile the exhibit as so amended. Any incomplete exhibit may not, however, be incorporated by reference into any subsequent filing under any Act administered by the Commission. If an exhibit required to be executed (*e.g.,* an underwriting agreement) is filed in final form, a copy of an executed copy shall be filed.

4. Schedules (or similar attachments) to the exhibits required by this Item are not required to be filed provided that they do not contain information material to an investment or voting decision and that information is not otherwise disclosed in the exhibit or the disclosure document. Each exhibit filed must contain a list briefly identifying the contents of all omitted schedules. Registrants need not prepare a separate list of omitted information if such information is already included within the exhibit in a manner that conveys the subject matter of the omitted schedules and attachments. In addition, the Registrant must provide a copy of any omitted schedule to the Commission or its staff upon request.

5. The Registrant may redact information from exhibits required to be filed by this Item if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (*e.g.,* disclosure of bank account numbers, social security numbers, home addresses and similar information).

■ 43. Amend Form 24F–2 (referenced in § 274.24 of this chapter) by:

■ a. Removing Item 9; and

■ b. Redesignating Item 10 as Item 9 and revising newly redesignated Item 9; and

■ c. Revising Instruction E.

The revisions read as follows:

Note: The text of Form 24F–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 24F–2

Annual Notice of Securities Sold Pursuant to Rule 24f–2

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9. Explanatory Notes (if any): The issuer may provide any information it believes would be helpful in understanding the information reported in response to any item of this Form. To the extent responses relate to a particular item, provide the item number(s), as applicable.

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Instructions

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E. Signature

The Form must be signed on behalf of the issuer by an authorized officer of the issuer. *See* rule 302 of Regulation S–T [17 CFR 232.302] regarding signatures on forms filed electronically.

* * * * *

By the Commission.

Dated: October 13, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–22756 Filed 12–8–21; 8:45 am]

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Part III

Federal Trade Commission

16 CFR Part 314
Standards for Safeguarding Customer Information; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 314

RIN 3084–AB35

Standards for Safeguarding Customer Information

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is issuing a final rule (''Final Rule'') to amend the Standards for Safeguarding Customer Information (''Safeguards Rule'' or ''Rule''). The Final Rule contains five main modifications to the existing Rule. First, it adds provisions designed to provide covered financial institutions with more guidance on how to develop and implement specific aspects of an overall information security program, such as access controls, authentication, and encryption. Second, it adds provisions designed to improve the accountability of financial institutions' information security programs, such as by requiring periodic reports to boards of directors or governing bodies. Third, it exempts financial institutions that collect less customer information from certain requirements. Fourth, it expands the definition of ''financial institution'' to include entities engaged in activities the Federal Reserve Board determines to be incidental to financial activities. This change adds ''finders''—companies that bring together buyers and sellers of a product or service—within the scope of the Rule. Finally, the Final Rule defines several terms and provides related examples in the Rule itself rather than incorporates them from the Privacy of Consumer Financial Information Rule (''Privacy Rule'').

DATES:

Effective date: This rule is effective January 10, 2022.

Applicability date: The provisions set forth in § 314.5 are applicable beginning December 9, 2022.

FOR FURTHER INFORMATION CONTACT: David Lincicum (202–326–2773), Katherine McCarron (202–326–2333), or Robin Wetherill (202–326–2220), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Gramm Leach Bliley Act (''GLB'' or ''GLBA'') in 1999.[1] The GLBA provides a framework for regulating the privacy and data security practices of a broad range of financial institutions. Among other things, the GLBA requires financial institutions to provide customers with information about the institutions' privacy practices and about their opt-out rights, and to implement security safeguards for customer information.

Subtitle A of Title V of the GLBA required the Commission and other Federal agencies to establish standards for financial institutions relating to administrative, technical, and physical safeguards for certain information.[2] Pursuant to the Act's directive, the Commission promulgated the Safeguards Rule (16 CFR part 314) in 2002. The Safeguards Rule became effective on May 23, 2003.

The current Safeguards Rule requires a financial institution to develop, implement, and maintain a comprehensive information security program that consists of the administrative, technical, and physical safeguards the financial institution uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.[3] The information security program must be written in one or more readily accessible parts.[4] The safeguards set forth in the program must be appropriate to the size and complexity of the financial institution, the nature and scope of its activities, and the sensitivity of any customer information at issue.[5] The safeguards must also be reasonably designed to ensure the security and confidentiality of customer information, protect against any anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.[6]

In order to develop, implement, and maintain its information security program, a financial institution must identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information.[7] The financial institution must then design and implement safeguards to control the risks identified through the risk assessment, and must regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.[8] The Rule also requires the financial institution to evaluate and adjust its information security program in light of the results of this testing and monitoring, any material changes in its operations or business arrangements, or any other circumstances it knows or has reason to know may have a material impact on its information security program.[9] The financial institution must also designate an employee or employees to coordinate the information security program.[10]

Finally, the current Safeguards Rule requires financial institutions to take reasonable steps to select and retain service providers capable of maintaining appropriate safeguards for customer information and require those service providers by contract to implement and maintain such safeguards.[11]

II. Regulatory Review of the Safeguards Rule

On September 7, 2016, the Commission solicited comments on the Safeguards Rule as part of its periodic review of its rules and guides.[12] The Commission sought comment on a number of general issues, including the economic impact and benefits of the Rule; possible conflicts between the Rule and state, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Commission received 28 comments from individuals and entities representing a wide range of viewpoints.[13] Most commenters agreed there is a continuing need for the Rule and it benefits consumers and competition.[14]

On April 4, 2019, the Commission issued a notice of proposed rulemaking (NPRM) setting forth proposed amendments to the Safeguards Rule (the ''Proposed Rule'').[15] In response, the Commission received 49 comments from various interested parties

[1] Pubic Law 106–102, 113 Stat. 1338 (1999).

[2] *See* 15 U.S.C. 6801(b), 15 U.S.C. 6805(b)(2).

[3] 16 CFR 314.2(c).

[4] 16 CFR 314.3(a).

[5] 16 CFR 314.3(a), (b).

[6] 16 CFR 314.3(a), (b).

[7] 16 CFR 314.4(b).

[8] 16 CFR 314.4(c).

[9] 16 CFR 314.4(e).

[10] 16 CFR 314.4(a).

[11] 16 CFR 314.4(d).

[12] Safeguards Rule, Request for Comment, 81 FR 61632 (Sept. 7, 2016).

[13] The 28 public comments received prior to March 15, 2019, are posted at: *https://www.ftc.gov/policy/public-comments/initiative-674.*

[14] *See, e.g.,* Mortgage Bankers Association (comment 39, NPRM); National Automobile Dealers Association (Comment 40, NPRM); Data & Marketing Association (comment 38, NPRM); Electronic Transactions Association (comment 24, NPRM); State Privacy & Security Coalition (comment 26, NPRM).

[15] FTC Notice of Proposed Rulemaking, 84 FR 13158 (April 4, 2019).

including industry groups, consumer groups, and individual consumers.[16] On July 13, 2020, the Commission held a workshop concerning the proposed changes and conducted panels with information security experts discussing subjects related to the Proposed Rule.[17] The Commission received 11 comments following the workshop.[18] After reviewing the initial comments to the Proposed Rule, conducting the workshop, and then reviewing the comments received following the workshop, the Commission now issues final amendments to the Safeguards Rule.

III. Overview of Final Rule

As noted above, the Final Rule modifies the current Rule in five primary ways. First, the Final Rule amends the current Rule to include more detailed requirements for the development and establishment of the information security program required under the Rule. For example, while the current Rule requires financial institutions to undertake a risk assessment and develop and implement safeguards to address the identified risks, the Final Rule sets forth specific criteria for what the risk assessment must include, and requires the risk assessment be set forth in writing. As to particular safeguards, the Final Rule requires that they address access controls, data inventory and classification, encryption, secure development practices, authentication, information disposal procedures, change management, testing, and incident response. And while the Final Rule retains the requirement from the current Rule that financial institutions provide employee training and appropriate oversight of service providers, it adds mechanisms designed to ensure such training and oversight are effective. Although the Final Rule has more specific requirements than the current Rule, it still provides financial institutions the flexibility to design an information security program appropriate to the size and complexity of the financial institution, the nature and scope of its activities, and the sensitivity of any customer information at issue.

Second, the Final Rule adds requirements designed to improve accountability of financial institutions' information security programs. For example, while the current Rule allows a financial institution to designate one or more employees to be responsible for the information security program, the Final Rule requires the designation of a single Qualified Individual. The Final Rule also requires periodic reports to boards of directors or governing bodies, which will provide senior management with better awareness of their financial institutions' information security programs, making it more likely the programs will receive the required resources and be able to protect consumer information.

Third, recognizing the impact of the additional requirements on small businesses, the Final Rule exempts financial institutions that collect information on fewer than 5,000 consumers from the requirements of a written risk assessment, incident response plan, and annual reporting to the Board of Directors.

Fourth, the Final Rule expands the definition of ''financial institution'' to include entities engaged in activities the Federal Reserve Board determines to be incidental to financial activities. This change brings ''finders''—companies that bring together buyers and sellers of a product or service—within the scope of the Rule. Finders often collect and maintain very sensitive consumer financial information, and this change will require them to comply with the Safeguards Rule's requirements to protect that information. This change will also bring the Rule into harmony with other Federal agencies' Safeguards Rules, which include activities incidental to financial activities in their definition of financial institution.

Finally, the Final Rule includes several definitions and related examples, including of ''financial institution,'' in the Rule itself rather than incorporate them from a related FTC rule, the Privacy of Consumer Financial Information Rule, 16 CFR part 313. This will make the rule more self-contained and will allow readers to understand its requirements without referencing the Privacy Rule.

IV. Section-by-Section Analysis

General Comments

The Commission received 49 comments in response to the NPRM for the Proposed Rule, from a diverse set of stakeholders, including industry groups, individual businesses, consumer advocacy groups, academics, information security experts, government agencies, and individual consumers. It also hosted a workshop on the Proposed Rule, which included approximately 20 security experts. Some of the comments simply expressed general support[19] or general disapproval[20] of the Proposed Rule. Many, however, offered detailed responses to specific proposals in the NPRM. In general, industry groups were opposed to most or all of the Proposed Rule, and consumer advocacy groups, academics, and security experts were generally in favor of the amendments. The comments and workshop record are discussed in the following Section-by-Section analysis.

Sec. 314.1: Purpose and Scope

The Purpose and Scope section of the current Rule generally states the Rule implements the Gramm-Leach-Bliley Act and applies to the handling of customer information by financial institutions over which the FTC has jurisdiction. In its NPRM, the Commission proposed adding a definition of ''financial institution'' modeled on the definition included in the Commission's Privacy Rule (16 CFR part 313) and a series of examples providing guidance on what constitutes a financial institution under the Commission's jurisdiction. Other than expanding the definition of ''financial institution'' as discussed below, the new language was not meant to reflect a substantive change to the Safeguards Rule; rather, it was meant to allow the Rule to be read on its own, without reference to the Privacy Rule.[21] The Commission received no comments that addressed this section specifically, and

[16] The 49 relevant public comments received on or after March 15, 2019, can be found at *Regulations.gov*. *See* FTC Seeks Comment on Proposed Amendments to Safeguards and Privacy Rules, 16 CFR part 314, Project No. P145407, *https://www.regulations.gov/docket/FTC-2019-0019/document.*

[17] *See* FTC, Information Security and Financial Institutions: An FTC Workshop to Examine Safeguards Rule Tr. (July 13, 2020), *https://www.ftc.gov/system/files/documents/public_events/1567141/transcript-glb-safeguards-workshop-full.pdf* [hereinafter Safeguards Workshop Tr.].

[18] The 11 relevant public comments relating to the subject matter of the July 13, 2020, workshop can be found at *https://www.regulations.gov/document/FTC-2020-0038-0001*. This document cites comments using the last name of the individual submitter or the name of the organization, followed by the number based on the last two digits of the comment ID number.

[19] *See* Encore Capital Group (comment 25, NPRM); Justine Bykowski (comment 12, NPRM); ''Peggy from Bloomington, MN'' (comment 13, NPRM); ''Anonymous'' (comment 20, NPRM).

[20] ''Jane Q. Citizen'' (comment 14, NPRM).

[21] In a separate final rule, published elsewhere in this issue of the **Federal Register**, the Commission is amending the Privacy Rule to reflect changes made by the Dodd-Frank Act, limiting that rule to certain auto dealers. Through that proceeding, the Commission is also removing examples of financial institutions from the Privacy Rule that are no longer covered under the rule in the wake of these changes.

the Commission adopts the language of the Proposed Rule in the Final Rule.[22]

Sec. 314.2: Definitions

The Proposed Rule added a number of definitions to § 314.2. The Proposed Rule also retained paragraph (a), which states terms used in the Safeguards Rule have the same meaning as set forth in the Privacy Rule.

The American Council on Education (ACE) suggested all terms from the Privacy Rule, such as ''consumer,'' ''customer,'' and ''customer information,'' be included in the Final Rule in order to make the Final Rule easier for regulated entities to understand.[23] On the other hand, HITRUST recommended no definitions from the Privacy Rule be duplicated in the Safeguards Rule, reasoning that in the event of a need to amend the terms, it would require the amendment of two rules rather than one.[24]

The Commission is persuaded including all terms from the Privacy Rule within the Safeguards Rule will improve clarity and ease of use. Accordingly, the Commission has determined to delete paragraph (a), since it is no longer necessary to state all terms in the Safeguards Rule have the same meaning as in the Privacy Rule. It also adds the Privacy Rule definitions of ''consumer,'' ''customer,'' ''customer relationship,'' ''financial product or service,'' ''nonpublic personal information,'' ''personally identifiable financial information,'' ''publicly available information,'' and ''you'' to the definitions in the Final Rule. No substantive change to these definitions is intended.

Authorized User

The Proposed Rule added a definition for the term ''authorized user'' as paragraph (b). Proposed paragraph (b) defined an authorized user of an information system as any employee, contractor, agent or other person that participates in your business operations and is authorized to access and use any of your information systems and data. This term was used in § 314.4(c)(10) of the Proposed Rule, which required financial institutions to implement policies to monitor the activity of ''authorized users'' and detect unauthorized access to customer information.

The Commission received one comment on this proposed definition from the National Automobile Dealers Association (NADA), which suggested the term ''authorized user'' was used inconsistently and was too vague.[25] NADA pointed out while ''authorized user'' is a defined term, the term ''authorized individual'' was used in proposed § 313.4(c)(1) (addressing access controls for information systems) and (c)(3) (addressing access controls for physical data). NADA also argued the inclusion of ''other person that participates in the business operations of an entity'' within the definition of ''authorized user'' was unclear and created ambiguity in its application.[26]

The Commission agrees with NADA's points, and, in response, modifies the Final Rule in two ways. First, the Final Rule replaces the term ''authorized individual'' with ''authorized user'' in § 313.4(c)(1). As described further below, because the Final Rule combines § 313.4(c)(3) with § 313.4(c)(1), there is no need to make a corresponding change to that section.

Second, because the Commission agrees the ambiguities in the definition of ''authorized user'' from the Proposed Rule could create confusion, it makes several changes to the definition. It deletes the phrase ''other person that participates in the business operations of an entity.'' The Commission agrees this phrase was vague. The Commission had intended it to cover any person the financial institution allows to access information systems or data, including, for example, ''customers'' of the financial institutions. For the purpose of controlling authorized access and detecting unauthorized access (which is where the definition of ''authorized user'' appears), financial institutions should monitor anomalous patterns of usage of their systems, not only by employees and agents, but also by customers and other persons authorized to access systems or data. To clarify this point, the Commission adds ''customer or other person'' to the definition of ''authorized users.''

The Commission intends that the definition of ''authorized users'' should include anyone who the financial institution authorizes to access an information system or data, regardless of whether that user actually uses the data. Thus, for clarity, the Commission has deleted the requirement that the authorized user be authorized *to use* the information system or data. Finally, the definition of authorized user should include users who can access both ''information systems and data'' and users authorized to access either information systems *or* data. Accordingly, for clarification purposes, the Commission modifies the definition of authorized user in the Final Rule as any employee, contractor, agent, customer or other person that is authorized to access any of your information systems or data.

Security Event

In proposed paragraph (c), the Commission defined security event as an event resulting in unauthorized access to, or disruption or misuse of, an information system or information stored on such information system. This term was used in provisions requiring financial institutions to establish a written incident response plan designed to respond to security events. It also appeared in the provision requiring the coordinator of a financial institution's information security program to provide an annual report to the financial institution's governing body; the required report must identify all security events that took place that year.

Commenters expressed three main concerns with this definition. The first relates to whether the term ''security event'' should be expanded to instances in which there is unauthorized access to, or disruption or misuse of, information in physical form, as opposed to electronic form. The Proposed Rule used the term ''security event'' instead of ''cybersecurity event'' to clarify that an information security program encompasses information in both digital and physical forms and that unauthorized access to paper files, for example, would also be a security event under the Rule. The Money Services Round Table (MSRT), however, noted despite the use of the more general ''security'' in the defined term, the definition itself is limited to events involving information systems.[27] The Commission agrees this creates a contradiction. Accordingly, the Final Rule includes the compromise of customer information in physical form in the definition of ''security event.''

Second, some industry groups argued a ''security event'' should occur only when there is ''unauthorized access'' to an information system, not in cases in which there has been a ''disruption or misuse'' of such systems (*e.g.,* a ransomware attack).[28] These

[22] Several commenters addressed the change to the definition of ''financial institution.'' Those comments are addressed in the discussion of the definition of ''financial institution'' below.

[23] American Council on Education (comment 24, NPRM), at 7.

[24] HITRUST, (comment 18, NPRM), at 2.

[25] National Automobile Dealers Association (comment 46, NPRM), at 11–12.

[26] National Automobile Dealers Association (comment 46, NPRM), at 11–12.

[27] Money Services Round Table (comment 53, NPRM), at 5 n.14.

[28] National Independent Automobile Dealers Association (comment 48, NPRM), at 4; National

commenters argued the disruption or misuse of information systems is not directly related to the protection of customer information and is, therefore, outside the Commission's statutory authority.[29] The Commission disagrees. Requiring a financial institution to protect against disruption and misuse of its information system is within the Commission's authority under the GLBA, which directed the Commission to promulgate a rule that required financial institutions to ''to protect against any anticipated threats or hazards to the security or integrity'' of customer information. A disruption or misuse of an information system will be, in many cases, a threat to the ''integrity'' of customer information. In addition, disruption or misuse may also indicate the existence of a security weakness that could be exploited to gain unauthorized access to customer information. For example, an event in which ransomware placed on a system is used to encrypt customer information, rendering it useless, raises the possibility similar software could have been used to exfiltrate customer information. Accordingly, the Final Rule retains the inclusion of ''misuse or disruption'' within the definition of ''security event.''

Third, several commenters suggested the definition of ''security event'' be limited to events in which there is a risk of consumer harm or some other negative effect.[30] Similarly, some commenters argued the definition should exclude events that involve encrypted information in which the encryption key was not compromised or when there is evidence the information accessed has not been misused.[31] The Commission declines to narrow the provision in this manner. It believes a financial institution should still engage in its incident response procedures to determine whether the event indicates a weakness that could endanger customer information and to respond accordingly. The financial institution can then take the appropriate steps in response. Further, § 314.4(h) of the Final Rule, which sets forth the requirement for an incident response plan, requires the incident response plan be designed to respond only to security events ''materially affecting the confidentiality, integrity, or availability of customer information,'' limiting the impact of the definition of ''security event.''

Accordingly, the Final Rule defines security event as an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form. The Proposed Rule placed this definition as paragraph (c), out of alphabetical order. The Final Rule adopts it as paragraph (p), placing it in alphabetical order with the other definitions in § 314.2.

Encryption

Proposed paragraph (e) defined encryption as the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key. This term was used in proposed § 314.4(c)(4), which generally required financial institutions to encrypt customer information. This definition was intended to define the process of encryption while not requiring any particular technology or technique for achieving the protection provided by encryption.

NADA argued this definition should be made more flexible by adding an alternative so it would read ''the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key *or securing information by another method that renders the data elements unreadable or unusable*'' (emphasis added).[32] On the other hand, others argued the Proposed Rule's definition did not sufficiently protect customer information.[33] For example, the Princeton University Center for Information Technology Policy (''Princeton Center'') suggested the Rule should be changed ''to clarify that encryption must be consistent with current cryptographic standards and accompanied by appropriate safeguards for cryptographic key material.'' [34] Similarly, ACE argued the definition should include ''the transformation of data in accordance with industry standards.'' [35]

The Commission agrees the proposed definition should be tethered to some technical standard, without being too prescriptive about what that standard is. Under the proposed definition, as well as NADA's proposed definition, financial institutions could have claimed they were ''encrypting'' data if they were aggregating it, scrambling it, or redacting it in a way that made it possible to re-identify the data through, for example, the application of common algorithms or programs. The Commission does not believe this would have provided consumers with sufficient protection. The Commission also agrees with the commenters who stated the definition should signal that encryption should be cryptographically based.

Accordingly, the Final Rule defines encryption as the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key, consistent with current cryptographic standards and accompanied by appropriate safeguards for cryptographic key material. This definition does not require any specific process or technology to perform the encryption but does require that whatever process is used be sufficiently robust to prevent the deciphering of the information in most circumstances.

Financial Institution

Incidental Activity

The Proposed Rule made one substantive change to the definition of ''financial institution'' it incorporated from the Privacy Rule. The change was designed to include entities ''significantly engaged in activities that are incidental to [] financial activity'' as defined by the Bank Holding Company Act. This proposed change brought only one activity into the definition that was not covered before: the act of ''finding'' as defined in 12 CFR 225.86(d)(1). The proposed revision to paragraph (f) added an example of a financial institution acting as a finder by ''bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate.'' This example used the language set forth in 12 CFR 225.86(d)(1), which defines ''finding'' as an activity incidental to a financial activity under the Bank Holding Company Act. The Commission

Automobile Dealers Association (comment 46, NPRM), at 12–13; Consumer Data Industry Association (comment 36, NPRM), at 3–4.

[29] National Independent Automobile Dealers Association (comment 48, NPRM), at 4; National Automobile Dealers Association (comment 46, NPRM), at 12–13.

[30] HITRUST (comment 18, NPRM), at 3; American Council on Education (comment 24, NPRM), at 7; Mortgage Bankers Association (comment 26, NPRM), at 4–5; Consumer Data Industry Association (comment 36, NPRM), at 3–4; National Automobile Dealers Association (comment 46, NPRM), at 12–13; National Independent Automobile Dealers Association (comment 48, NPRM), at 4.

[31] Mortgage Bankers Association (comment 48, NPRM), at 4–5; National Automobile Dealers Association (comment 46, NPRM), at 12–13; National Independent Automobile Dealers Association (comment 48, NPRM) at 4; American Council on Education (comment 24, NPRM), at 7.

[32] National Automobile Dealers Association (comment 46, NPRM), at 13.

[33] American Council on Education (comment 24, NPRM), at 7; Princeton University Center for Information Technology Policy (comment 54, NPRM), at 4.

[34] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 4.

[35] American Council on Education (comment 24, NPRM), at 7.

adopts this proposal without modification.

The change to the definition of ''financial institution'' brings it into harmony with other agencies' GLB rules.[36] The change is supported by the language of the Gramm-Leach-Bliley Act.[37] The Act defines a ''financial institution'' as any institution ''the business of which is engaging in financial activities as described in section 1843(k) of title 12.'' [38] That section, in turn, describes activities that are financial in nature as those the Board has determined ''to be financial in nature or incidental to such financial activity.'' [39] The Final Rule's definition mirrors this language. The change will not lead to a significant expansion of the Rule coverage as it expands the definition only to include entities engaged in activity incidental to financial activity, as determined by the Federal Reserve Board. The Board has determined only one activity to be incidental to financial activity—''acting as a finder.'' [40]

Several commenters who addressed this issue supported the inclusion of activities incidental to financial activities.[41] Other commenters expressed concern the proposed change in the definition would expand the Rule's coverage to businesses that should not be considered financial institutions.[42] They argued the definition of the term ''finder'' is too broad and companies that connect buyers and sellers in non-financial contexts would be swept inappropriately into the definition of ''financial institution.'' The Association of National Advertisers argued advertising agencies could be considered ''finders'' because they play a role in connecting buyers and sellers.[43]

In response, the Commission notes the Federal Reserve Board describes acting as a finder as ''bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate.'' [44] The Board sets forth several activities within the scope of acting as a finder, such as ''[i]dentifying potential parties, making inquiries as to interest, introducing and referring potential parties to each other, [] arranging contacts between and meetings of interested parties'' and ''[c]onveying between interested parties expressions of interest, bids, offers, orders and confirmations relating to a transaction.'' [45]

Although this language is somewhat broad, its scope is significantly limited in the context of the Safeguards Rule. First, the Safeguards Rule applies only to transactions ''for personal, family, or household purposes.'' [46] Therefore, only finding services involving consumer transactions will be covered. Second, the Safeguards Rule applies only to the information of customers, which are consumers with which a financial institution has a continuing relationship.[47] Therefore, it will not apply to finders that have only isolated interactions with consumers and do not receive information from other financial institutions about those institutions' customers. This significantly narrows the types of finders that will have obligations under the Rule, excluding, the Commission believes, most advertising agencies and similar businesses that generally do not have continuing relationships with consumers who are using their services for personal or household purposes.

The Commission believes entities that perform finding services for consumers with whom they have an ongoing relationship are properly considered ''financial institutions'' for purposes of the Rule. Accordingly, the Commission adopts the changes to the definition of ''financial institution'' as proposed.

Other Changes to Definition of ''Financial Institutions''

Other commenters suggested modifying the definition of ''financial institution'' [48] in different ways. The Electronic Privacy Information Center (EPIC) argued the definition should be expanded by treating more activities as financial activities.[49] EPIC pointed out information shared with social media companies, retailers, apps, and devices generally is not covered under the Safeguards Rule. The Commission understands the concern that many businesses fall outside the coverage of the Safeguards Rule, despite handling sensitive consumer information, but the Commission's authority to regulate activity under the Safeguards and Privacy Rules is established by the GLBA. The Rule's application is limited to financial institutions as defined by that statute and cannot be extended beyond that definition.[50] The institutions discussed by EPIC, however, are still covered by the FTC Act's prohibition against deceptive or unfair conduct, including with respect to their use and protection of consumer information.[51]

The National Federation of Independent Business (NFIB) argued individuals and sole proprietors should be excluded from the definition of ''financial institution'' because an individual cannot be an ''institution.'' [52] When the Privacy Rule was promulgated in 2000, commenters also suggested the definition should exclude sole proprietors.[53] The Commission noted there was no basis to exclude sole proprietors and ''[w]hether or not a

[36] *See* 12 CFR 1016.3(l) (defining ''financial institution'' for entities regulated by agencies other than the FTC). *See also* 17 CFR 248.3(n) (defining ''financial institution'' to include ''any institution the business of which is . . . incidental to . . . financial activities'' for Security and Exchange Commission's rule implementing GLBA's safeguard provisions.).

[37] 15 U.S.C. 6801 *et seq.*

[38] 15 U.S.C. 6809(3).

[39] 12 U.S.C. 1843(k).

[40] 12 CFR 225.86.

[41] Electronic Privacy Information Center (comment 55, NPRM), at 9; Independent Community Bankers of America (comment 35, NPRM), at 3; National Automobile Dealers Association (comment 46, NPRM), at 13–16.

[42] Association of National Advertisers (comment, Workshop), at 4–5; internet Association (comment, Workshop), at 4–5; *see also* Anonymous (comment 15, NPRM) (questioning whether any governing body would oversee any future determinations by the Federal Reserve Board that activities are incidental to financial activity).

[43] Association of National Advertisers (comment 5, Workshop), at 5.

[44] 12 CFR 225.86 (d).

[45] 12 CFR 225.86 (d)(1)(i).

[46] *See* Final Rule 16 CFR 314.2(b)(1).

[47] 16 CFR 314.1; Final Rule 16 CFR 314.2(c).

[48] National Pawnbrokers Association (comment 32, NPRM), at 5–6 (arguing that transaction-reporting vendors be included in definition); National Consumer Law Center and others (comment 58, NPRM), at 5 (arguing that consumer reporting agencies be included explicitly in the definition); *see also* American Escrow Association (comment, Workshop), at 2–3 (requesting that the Rule specifically set out the duties of real estate settlement operations and other businesses that handle but do not maintain sensitive information); Beverly Enterprises, LLC (comment 3, NPRM), at 3–4 (requesting that the Rule specifically set out duties related to online notarizations); Yangxue Li (comment 5, NPRM) (asking whether Rule would set forth specific guidelines for different industries); Slobadon Raybolka (comment 17, NPRM) (suggesting that companies that perform online background checks be covered by the rule); The Clearing House (comment 49, NPRM) (suggesting a separate set of more stringent rules for fintech companies).

[49] Electronic Privacy Information Center (comment 55, NPRM), at 9.

[50] *See* 15 U.S.C. 6801 (requiring agencies to promulgate Rule establishing standards for financial institutions); 15 U.S.C. 6809(3) (defining ''financial institutions'' as an ''institution the business of which is engaging in financial activities as described'' in the Bank Holding Company Act).

[51] In the Matter of *Facebook, Inc.,* Docket No. C–4365 (Apr. 28, 2020); *FTC* v. *Wyndham Worldwide Corporation,* 799 F.3d 236 (3d Cir. 2015); FTC v. *D-Link Systems, Inc.,* Case No. 3:17–cv–00039–JD (N.D. Cal. July 2, 2019); In the Matter of *Twitter, Inc.,* Docket No. C–4316 (Mar. 11, 2011).

[52] National Federation of Independent Business (comment 16, NPRM), at 2–3.

[53] Privacy Rule, Final Rule, 65 FR 33645 (May 24, 2000) at 33656.

commercial enterprise is operated by a single individual is not determinative'' of whether the enterprise is a financial institution. The Commission has not changed its position on this matter and declines to make this change to the definition of ''financial institution.''

The Final Rule adopts this definition as proposed without change.

Information Security Program

Paragraph (i) of the Final Rule adopts the existing Rule's paragraph (c) and does not alter the definition of ''information security program.'' The Commission received no comments on this definition, and accordingly, adopts the current definition in the Final Rule.

Information System

Proposed paragraph (h) defined information system as a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems. The term ''information system'' was used throughout the proposed amendments to designate the systems that must be covered by the information security program.

The MSRT suggested this definition was too narrow in some respects and too broad in others.[54] It argued the definition of ''information system'' was too narrow because it did not include physical systems or employees and would exclude them from some of the provisions of the Rule. Specifically, the MSRT argued that based on this definition, the penetration tests required by § 314.4(d)(2) would not be required to test ''potential human vulnerabilities'' such as social engineering or phishing.[55] The Commission does not agree. Penetration testing, as defined by the Final Rule, is a process through which testers ''attempt to circumvent or defeat the security features of an information system.'' [56] One way such security features are tested is through social engineering and phishing.[57] The fact that the testing involves employees with access to the information system, rather than just the system itself, does not exclude such tests from the definition of ''penetration testing.'' Attempted social engineering and phishing are important parts of testing the security of information systems and would not be excluded by this definition.

The MSRT also argued the definition was too broad, and was joined by other commenters in this concern.[58] These commenters shared a concern the proposed definition would include systems that are in no way connected to customer information and would require financial institutions to include all systems in their possession, regardless of their involvement with customer information. The Commission agrees the definition should be limited to those systems that either contain customer information or are connected to systems that contain customer information, and adds that limitation to the Final Rule. The Rule does not limit the definition to only those systems that contain customer information, because a common source of data breaches is a vulnerability in a connected system that an attacker exploits to gain access to the company's network and move within the network to obtain access to the system containing sensitive information.[59] Accordingly, the definition of information system in the Final Rule is modified to a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information containing customer information or any such system connected to a system containing customer information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental controls systems, that contains customer information or that is connected to a system that contains customer information.

Multi-Factor Authentication

Proposed paragraph (i) defined multi-factor authentication as authentication through verification of at least two of the following types of authentication factors: Knowledge factors, such as a password; possession factors, such as a token; or inherence factors, such as biometric characteristics. This term was used in proposed § 314.4(c)(6),[60] which required financial institutions to implement multi-factor authentication for individuals accessing networks that contain customer information.

Several commenters argued the definition should explicitly include SMS text messages as an acceptable example of a possession factor or otherwise to be explicitly allowed.[61] The Proposed Rule did not include SMS text messages as an example of a possession factor.[62] Most commenters who addressed this issue interpreted this exclusion from the examples as forbidding financial institutions from using SMS text messages as a possession factor for multi-factor authentication. That is not the effect of this exclusion, however. The language of the definition neither prohibits nor recommends use of SMS text messages. Indeed, SMS text messages are not addressed at all. In some cases, use of SMS text messages as a factor may be the best solution because of its low cost and easy use, if its risks do not outweigh those benefits under the circumstances.[63] In other instances, however, the use of SMS text messages may not be a reasonable solution, such as when extremely sensitive information can be obtained through the access method being controlled, or when a more secure method can be used for a comparable price. A financial institution will need to evaluate the balance of risks for its situation. If, however, the Commission were to explicitly allow use of SMS text messages, this could be considered a safe harbor that would not require the company to consider risks associated with use of SMS text as a factor in a particular use case. Accordingly, the Final Rule does not include SMS text

[54] Money Services Round Table (comment 53, NPRM), at 5–6.

[55] *Id.* at 5.

[56] Final Rule § 314.2(j).

[57] Indeed, Workshop participant Scott Wallace noted, in conducting penetration testing, ''the first thing [he does]'' is generally to ''prepare for the phishing campaign.'' Remarks of Scott Wallace, Safeguards Workshop Tr., *supra* note 17, at 131–32.

[58] Money Services Round Table (comment 53, NPRM), at 5; Consumer Data Industry Association (comment 36, NPRM), at 4; American Council on Education (comment 24, NPRM), at 7–8.

[59] *See* Remarks of Serge Jorgensen, Safeguards Workshop Tr., *supra* note 17, at 58–59 (noting cybersecurity attacks can take advantage of systems that are connected to the systems in which sensitive information is stored); Remarks of Tom Dugas, Safeguards Workshop Tr., *supra* note 17, at 138 (noting a vulnerability in one system can result in the exposure of information maintained in another system); *see also* Remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 106–07 (noting the heightened importance of encryption in a context where numerous systems are connected); Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 107–08 (same).

[60] Section 314.4(c)(5) in the Final Rule.

[61] Electronic Transactions Association (comment 27, NPRM), at 4; U.S. Chamber of Commerce (comment 33, NPRM), at 9; CTIA (comment 34, NPRM), at 7–9; Global Privacy Alliance (comment 38, NPRM), at 9; National Automobile Dealers Association (comment 46, NPRM), at 29; National Independent Automobile Dealers Association (comment 48, NPRM), at 6.

[62] *See, e.g.,* NIST Special Publication 800–63B, Digital Identity Guidelines, 5.1.3.3 (restricting use of verification using the Public Switched Telephone Network (SMS or voice) as an ''out-of-band'' factor for multi-factor authentication).

[63] *See, e.g.,* Remarks of Wendy Nather, Safeguards Workshop Tr., *supra* note 17, at 231–32.

messages in the examples of possession factors.

The final Rule adopts the proposed definition of ''multi-factor authentication'' without change as paragraph (k) of this section.

Penetration Testing

Proposed paragraph (j) defined penetration testing as a test methodology in which assessors attempt to circumvent or defeat the security features of an information system by attempting penetration of databases or controls from outside or inside your information systems. This term was used in proposed § 314.4(d)(2), which required financial institutions to continually monitor the effectiveness of their safeguards or to engage in annual penetration testing. The Commission received no comments concerning this definition. The Final Rule adopts the definition from the Proposed Rule as paragraph (m) of this section.

Personally Identifiable Financial Information

To minimize cross-referencing to the Privacy Rule, as noted above, the Commission is adding several definitions to the Final Rule. One of these definitions is ''personally identifiable financial information,'' which is identical to the definition currently contained in the Privacy Rule. This term is included within the ambit of ''customer information,'' in both the existing Rule and the Final Rule.

The Princeton Center suggested expanding the definition of ''personally identifiable financial information'' from the Privacy Rule to include ''aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.'' [64] The Princeton Center further suggested clarifying that, for information to not be considered ''personally identifiable financial information,'' the financial institution must be required to demonstrate the information is not ''reasonably linkable'' to individuals.

The Commission does not believe this amendment is necessary. The definition of ''personally identifiable financial information'' is already a broad one.[65] It includes not just information associated with types of personal information such as a name or address or account number, but also information linked to a persistent identifier (''any information you collect through an Internet 'cookie' (an information collecting device from a web server'')).[66] While there may be some merit to limiting the exception for aggregate information or blind data to data that cannot be reasonably linkable to an individual, for purposes of a rule that can be periodically updated to keep up with changing technology, the current approach is more concrete and enforceable, and less subject to differences in interpretation.

Service Provider

Proposed paragraph (k) adopted the existing Rule's definition and does not alter the definition of ''service provider.'' The Commission received no comments on this definition and adopts it as paragraph (q) of the Final Rule.

Sec. 314.3: Standards for Safeguarding Customer Information

Proposed § 314.3, which required financial institutions to develop an information security program (paragraph (a)) and set forth the objectives of the Rule (paragraph (b)), was largely identical to the existing Rule. It changed only the requirement that ''safeguards'' be based on the elements set forth in § 314.4, by replacing ''safeguards'' with ''information security program.'' The Commission received no comments on this proposal and adopts it without change in the Final Rule.

Sec. 314.4: Elements

Proposed § 314.4 altered the current Rule's required elements of an information security program and added several new elements.

General Comments

The Commission received many comments addressing the new elements, both in favor of the changes and opposed to them. The comments in favor of the changes generally argued these changes would protect consumers by improving the data security of institutions that hold their information.[67] Most of the comments opposed to the proposed elements fell into several categories, objecting: (1) The proposed changes were too prescriptive and did not allow financial institutions sufficient flexibility in managing their information security; (2) the proposed amendments would be too expensive for financial institutions, particularly smaller institutions, to adopt; and (3) some of the requirements should not apply to all customer information but should be limited to some subset of especially ''sensitive'' customer information. The Commission does not agree with these comments for the reasons discussed below, and accordingly, retains the general approach of the Proposed Rule in the Final Rule.

Flexibility

Many industry groups argued the new proposed elements were too prescriptive, lacked flexibility, would quickly become outdated, and would force financial institutions to engage in activities that would not enhance security.[68] For example, the Electronics Transactions Association argued the Proposed Rule would ''limit the ability of industry to develop new and innovative approaches to information security.'' [69] Similarly, CTIA commented the Proposed Rule would create a ''prescriptive core of requirements that covered businesses must follow, irrespective of whether risk assessments show they are necessary.'' [70]

The Commission, however, believes the elements provide sufficient flexibility for financial institutions to adopt information security programs suited to the size, nature, and complexity of their organization and information systems. The elements for the information security programs set forth in this section are high-level principles that set forth basic issues the

[64] Princeton University Center for Information Technology Policy (comment 54, NPRM) at 9–10.

[65] *See* 16 CFR 313.3(o)(1).

[66] 16 CFR 313.3(o)(2)(i)(F).

[67] *See, e.g.,* New York Department of Financial Service (comment 40, NPRM), at 1 (arguing the Proposed Rule would ''further advance efforts to protect financial institutions and consumers from cybercriminals.''); Princeton University Center for Information Technology Policy (comment 54, NPRM), at 1 (stating the Proposed Rule ''would significantly reduce data security risks for the customers of financial institutions.''); National Consumer Law Center and others (comment 58, NPRM), at 2 (stating requirements of Proposed Rule are ''reasonable and common-sense measures that any company dealing with large amounts of consumer personal information should take.'').

[68] *See, e.g.,* HITRUST (comment 18, NPRM), at 1–2; American Council on Education (comment 24, NPRM), at 2–4; Cristian Munarriz (comment 21, NPRM); Electronic Transactions Association (comment 27, NPRM), at 1–2; National Pawnbrokers Association (comment 32, NPRM), at 3; CTIA (comment 34, NPRM), at 5; Consumer Data Industry Association (comment 36, NPRM), at 2; Wisconsin Bankers Association (comment 37, NPRM), at 1–2; Global Privacy Alliance (comment 38, NPRM), at 5–6; Bank Policy Institute (comment 39, NPRM), at 2; American Financial Services Association (comment 41, NPRM), at 4; National Association of Dealer Counsel (comment 44, NPRM), at 1; ACA International, (comment 45, NPRM), at 4; National Automobile Dealers Association (comment 46, NPRM), at 11; National Independent Automobile Dealers Association (comment 48, NPRM), at 2–3; Money Services Round Table (comment 53, NPRM), at 1–4; Software & Information Industry Association (comment 56, NPRM), at 1–3; Gusto and others (comment 11, Workshop), at 2; Association of National Advertisers (comment 5, Workshop), at 1–3; internet Association (comment 9, Workshop), at 2–3.

[69] Electronic Transactions Association (comment 27, NPRM), at 1–2.

[70] CTIA (comment 34, NPRM), at 5.

programs must address, and do not prescribe how they will be addressed. For example, the requirement that the information security program be based on a risk assessment sets forth only three general items the assessment must address: (1) Criteria for evaluating risks faced by the financial institution; (2) criteria for assessing the security of its information systems; and (3) how the identified risks will be addressed. Other than meeting these basic requirements, financial institutions are free to perform their risk assessments in whatever way they choose, using whatever method or approach works best for them, as long as the method identifies reasonably foreseeable risks. The other elements are similarly flexible. The two elements that are more prescriptive, encryption and multi-factor authentication, allow financial institutions to adopt alternative solutions when necessary. Comments concerning individual elements are addressed separately in the more detailed analysis below.

Cost

Another common theme among the comments from industry groups was the proposed information security program elements would be prohibitively expensive, especially for smaller businesses.[71] Commenters argued the Proposed Rule would have required financial institutions to implement expensive changes to their systems and hire highly-compensated professionals to do so.[72] Industry groups were particularly concerned about the requirement that financial institutions designate a single qualified individual to coordinate their information security programs, arguing this would require hiring professionals that were both expensive, with salaries of more than $100,000 suggested by some, and in limited supply.[73] Overall, several commenters argued some financial institutions would be unable to afford to bring themselves into compliance with the Proposed Rule.[74]

The Commission recognizes properly securing information systems can be an expensive and technically difficult task. However, the Commission believes the additional costs imposed by the Proposed Rule are mitigated for several reasons and, ultimately, those costs are justified in order to protect customer information as required by the GLBA.[75] First, for almost 20 years, financial institutions have been required under the current Safeguards Rule to have information security programs in place. The current Safeguards Rule requires financial institutions to ''develop, implement, and maintain a comprehensive [written] information security program . . . appropriate to [the financial institutions'] size and complexity, the nature and scope of [their] activities, and the sensitivity of any customer information at issue.'' [76] This comprehensive program must be coordinated by one or more individuals and based on a risk assessment.[77] As such, financial institutions complying with the current Rule will not be required to establish an information security program from scratch. Instead, they can compare their existing programs to the revised Rule, and address any gaps. The Commission believes many of the requirements set forth in the Final Rule are so fundamental to any information security program that the information security programs of many financial institutions will already include them if those programs are in compliance with the current Safeguards Rule.

Second, a number of commenters who raised concerns about the costs imposed by the Rule believed the Proposed Rule would have required the hiring of a highly-compensated expert to serve as a Chief Information Security Officer (CISO).[78] It is correct the Proposed Rule would have modified the current requirement of designating an ''employee or employees to coordinate your information security program'' by requiring the designation of a single qualified individual responsible for

[71] American Council on Education (comment 24, NPRM), at 13–14; Wisconsin Bankers Association (comment 37, NPRM), at 1–2; American Financial Services Association (comment 41, NPRM), at 4; National Association of Dealer Counsel (comment 44, NPRM), at 1; National Automobile Dealers Association (comment 46, NPRM), at 11; National Independent Automobile Dealers Association, (comment 48, NPRM), at 3; Gusto and others (comment 11, Workshop), at 2–4; National Pawnbrokers Association (comment 3, NPRM), at 2; *see also* Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 72–74 (describing study that found compliance would be expensive for automobile dealers).

[72] *See, e.g.,* Slides Accompanying Remarks of James Crifasi, FTC, ''NADA Cost Study: Average Cost Per U.S. Franchised Dealership,'' Event Materials, Information Security and Financial Institutions: An FTC Workshop to Examine Safeguards Rule (July 13, 2020) *https://www.ftc.gov/system/files/documents/public_events/1567141/slides-glb-workshop.pdf* (hereinafter Safeguards Workshop Slides), at 25 (estimating an upfront cost of $293,975 per dealership, and an recurring annual cost of $276,925); *see also* Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 72–75; Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 78 (estimating the average annual salary of a CISO can range from $180,000 to upwards of $400,000); Slides Accompanying Remarks of Lee Waters, ''Estimated Costs of Proposed Changes,'' Safeguards Workshop Slides, at 26 (estimating the annual costs of a security program to include: Multi-factor authentication, $50 for smart card readers, and $10 each for smart cards; a CISO, either an in-house CISO, $180,000, an in-house cybersecurity analyst, $76,000, or an outsourced cybersecurity contractor, between $120,000 and $240,000; penetration testing, average cost $4,800; and physical security, $215,000 for construction, and $10,000 to $20,000 for new or upgraded locks)*; see also* Remarks of Lee Waters, Safeguards Workshop Tr., *supra* note 17, at 75–76.

[73] *See, e.g.,* Slides Accompanying Remarks of Lee Waters, ''Estimated Costs of Proposed Changes,'' Safeguards Workshop Slides, *supra* note 72, at 26 (estimating costs of an in-house CISO to be $180,000 annually, and an in-house cybersecurity analyst to be $76,000 annually; and estimating an outsourced cybersecurity contractor would cost between $120,000 to $240,000 annually); *see also* Remarks of Lee Waters, Safeguards Workshop Tr., *supra* note 17, at 75–76; Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 78 (estimating that the average annual salary of a CISO can range from $180,000 to upwards of $400,000).

[74] *See* Remarks of Lee Waters, Safeguards Workshop Tr., *supra* note 17, at 119–20 (noting when small businesses have to spend money to hire third-party vendors and security experts to comply with regulations, that affects consumer prices and small business profit margins); Slides Accompanying Remarks of James Crifasi, ''NADA Cost Study: Average Cost Per U.S. Franchised Dealership,'' Safeguards Workshop Slides, *supra* note 72, at 25*; see also* Remarks of James Crifasi, *supra* note 17, at 73 (noting the requirements ''start becoming a little bit unaffordable here.'').

[75] The Small Business Administration's Office of Advocacy commented it was concerned the FTC had not gathered sufficient data as to either the costs or benefits of the proposed changes for small financial institutions. Office of Advocacy, U.S. Small Business Administration (comment 28, NPRM), at 3–4. The FTC shares the Office of Advocacy's interest in ensuring that regulatory changes have an evidentiary basis. Many of the questions on which the FTC sought public comment, both in the regulatory review and in the proposed Rule context, specifically related to the costs and benefits of existing and proposed Rule requirements. Following the initial round of commenting, the Commission conducted the FTC Safeguards Workshop and solicited additional public comments with the explicit goal of gathering additional data relating to the costs and benefits of the proposed changes. *See* Public Workshop Examining Information Security for Financial Institutions and Information Related to Changes to the Safeguards Rule, 85 FR 13082 (Mar. 6, 2020). As detailed throughout this document, the Commission believes there is a strong evidentiary basis for the issuance of the final Rule.

[76] 16 CFR 314.3.

[77] 16 CFR 314.4.

[78] Several speakers at the Safeguards Workshop also raised this concern. *See, e.g.,* Slides Accompanying Remarks of James Crifasi, ''NADA Cost Study: Average Cost Per U.S. Franchised Dealership,'' in Safeguards Workshop Slides, *supra* note 72, at 25 (estimating appointing a CISO to increase program accountability would be a one-time, up-front cost of $27,500, with a recurring annual cost of $51,000); Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 72–75; Slides Accompanying Remarks of Lee Waters, ''Estimated Costs of Proposed Changes,'' in Safeguards Workshop Slides, *supra* note 72, at 26 (estimating costs of an in-house CISO to be $180,000 annually, and an in-house cybersecurity analyst to be $76,000 annually; and estimating that an outsourced cybersecurity contractor would cost between $120,000 to $240,000 annually); Remarks of Lee Waters, Safeguards Workshop Tr., *supra* note 17, at 75–76; Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 78 (estimating that the average annual salary of a CISO can range from $180,000 to upwards of $400,000).

overseeing and implementing the security program. This individual was referred to in the Proposed Rule as a Chief Information Security Officer or ''CISO.'' As discussed in detail below, the Final Rule does not use this term, though the concept is the same: The person designated to coordinate the information security program need only be ''qualified.'' No particular level of education, experience, or certification is prescribed by the Rule. Accordingly, financial institutions may designate any qualified individual who is appropriate for their business. Only if the complexity or size of their information systems require the services of an expert will the financial institution need to hire such an individual.[79]

Finally, the Commission believes while large financial institutions may well incur substantial costs to implement complex information security programs, there are much more affordable solutions available for financial institutions with smaller and simpler information systems. For example, there are very low-cost or even free vulnerability assessment programs available: ''virtual CISO'' services enable a third party to provide security support for many companies, splitting the cost of information security professionals among them; many applications and hardware have built-in encryption requirements; [80] and there are affordable multi-factor authentication solutions aimed at businesses of various sizes.

Considering these points, although there will undoubtedly be expenses involved for some, or even many, financial institutions to update their programs, the Commission believes these expenses are justified because of the vital importance of protecting customer information collected, maintained, and processed by financial institutions. Congress recognized the importance of securing consumers' sensitive financial information when it passed the GLBA, which required the FTC to promulgate the Safeguards Rule. The importance, as well as the difficulty, of protecting customer information has only increased in the more than twenty years since the passage of the GLBA. The Commission believes the amendments to the Safeguards Rule are necessary to ensure the purposes of the GLBA are satisfied, and so consumers can have confidence financial institutions are providing reasonable safeguards to protect their information.

''Sensitive'' Customer Information

Several industry groups also suggested significant portions of the Proposed Rule should not apply to all customer information, but rather only to some subset of particularly ''sensitive'' customer information, such as account numbers or social security numbers.[81] These commenters generally argued the definition of ''customer information'' is too broad, as it will include information the commenters felt is not particularly sensitive, such as name and address, and does not justify extensive safeguards.[82]

The Commission does not agree that some portion of customer information is not entitled to the protections required by the Final Rule. The Safeguards Rule defines ''customer information'' as ''any record containing nonpublic personal information'' about a customer handled or maintained by or on behalf of a financial institution.[83] The Final Rule defines ''nonpublic personal information'' as ''personally identifiable financial information,'' but does not include information that is ''publicly available.'' Although this definition is broad, the Commission believes information covered by it is rightfully considered sensitive and should be protected accordingly. The businesses regulated by the Safeguards Rule are not just any businesses, but are financial institutions and are responsible for handling and maintaining financial information that is both important to consumers and valuable to attackers who try to obtain the information for financial gain. Even the fact that a consumer is a customer of a particular financial institution is generally nonpublic and can be sensitive. For example, the revelation of a customer relationship between a consumer and a particular type of financial institution, such as debt collectors or payday lenders, may make those customers' information more vulnerable to compromise by facilitating social engineering or similar attacks. The nature of the relationship between customers and their financial institutions makes all nonpublic information held by the financial institution inherently sensitive and worthy of the level of protection set forth in the Rule.

Although the Commission believes all customer information should be safeguarded by financial institutions and declines to exclude any portion of that information from protection under any of the provisions of the Rule, it notes the Rule does contemplate financial institutions will consider the sensitivity of particular information in designing their information security programs and safeguards. The elements required by this section are generally flexible enough to allow financial institutions to treat various pieces of information differently. For example, paragraph (c)(1) requires information security programs to include safeguards that address access control of customer information. The paragraph requires financial institutions to develop measures to ensure only authorized users access customer information, but does not prescribe any particular measures that must be adopted. When designing these measures, a financial institution may design a system in which more sensitive information is protected by more stringent access controls. Even in the more specific provisions of the Rule, there is flexibility to address the relative sensitivity of information. For example, in § 313.4(c)(5)'s requirement that customer information be protected by multi-factor authentication, financial institutions have flexibility to implement the multi-factor authentication depending on the sensitivity of the information. The financial institution may select factors such as SMS text messages to access less sensitive information, but determine more sensitive information should be protected by other, more secure, factors for authentication.

Third-Party Standards and Frameworks

In addition, in the NPRM, the Commission asked whether the Safeguards Rule should incorporate outside standards, such as the National Institute of Standards and Technology (''NIST'') framework, either as required elements of an information security program or as a safe harbor that would

[79] *See, e.g.,* Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 89–90 (noting the size of a financial institution and the amount and nature of the information it holds factor into an appropriate information security program); *see also* Slides Accompanying Remarks of Rocio Baeza, ''Models for Complying to the Safeguards Rule Changes,'' in Safeguards Workshop Slides, *supra* note 72, at 27–28 (describing three different compliance models: In-house, outsource, and hybrid, with costs ranging from $199 per month to more than $15,000 per month); Remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 81–83 (describing three compliance models in more detail).

[80] *See* Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 78 (describing virtual CISO services).

[81] *See, e.g.,* Electronic Transactions Association (comment 27, NPRM), at 2–4; CTIA (comment 34, NPRM), at 10; Global Privacy Alliance (comment 38, NPRM), at 7–8; American Financial Services Association (comment 41, NPRM), at 5; ACA International (comment 45, NPRM), at 13; Money Services Round Table (comment 53, NPRM), at 6–7.

[82] *See, e.g.,* Electronic Transactions Association (comment 27, NPRM), at 2; Global Privacy Alliance (comment 38, NPRM), at 7.

[83] 16 CFR 314.2(b).

treat compliance with such a standard as compliance with the Safeguards Rule. Some commenters advocated for the adoption of an outside standard into the Safeguards Rule.[84] Cisco Systems, Inc. suggested the Safeguards Rule should be connected to NIST guidance, arguing this would allow the Rule to evolve as NIST's guidance evolves.[85] An anonymous commenter suggested the Rule should comply with ''international standard ISO/IEC 27001.'' [86] The National Consumer Law Center argued certain financial institutions with particularly sensitive customer information should be required to comply with guidelines issued by NIST and the Federal Financial Institutions Examination Council (FFIEC).[87] Other commenters acknowledged the value of outside standards but were opposed to the Rule requiring compliance with them.[88]

Some commenters suggested while compliance with outside standards should not be required, compliance should serve as a ''safe harbor'' for compliance with the Rule.[89] On the other hand, Consumer Reports noted while such standards can be helpful guidance, they should not be a safe harbor for compliance with the Rule because financial institutions must take steps to ensure they are responding to changing information security threats regardless of the requirements of an outside framework.[90]

The Commission declines to change the Rule to incorporate or reference a particular security standard or framework for a variety of reasons. First, it is not clear the more detailed frameworks would apply well to financial institutions of various sizes and industries. In addition, mandating companies follow a particular security standard or framework would reduce the flexibility built into the Rule. Similarly, the Commission declines to make compliance with an outside standard a safe harbor for the Rule. In such a scenario, the use of safe harbors would not greatly enhance regulatory stability or predictability for financial institutions because the Commission would be required to actively monitor whether those standards continued to provide equivalent protections for Safeguards compliance and modify the Rule if a standard became inadequate. In addition, in investigating possible violations of the Rule, the Commission would be required to independently verify whether the financial institution had in fact complied with the outside framework, which would require substantial effort and expense on the part of the Commission and the target of the investigation.

Specific Elements

In addition to these generally applicable comments, commenters addressed many of the individual elements set forth by this section. These elements are discussed in more detail below.

Paragraph (a)—Designation of a Single Qualified Individual

Proposed paragraph (a) changed the current requirement that institutions designate an ''employee or employees to coordinate your information security program'' to instead require the financial institution to designate ''a qualified individual responsible for overseeing and implementing your information security program and enforcing your information security program.'' [91] This individual was referenced in the Proposed Rule as a Chief Information Security Officer or ''CISO.''

The notice of proposed rulemaking for the Proposed Rule emphasized the use of the term ''CISO'' was for clarity in the Proposed Rule.[92] Despite the use of the term ''CISO,'' the Proposed Rule did not require financial institutions to actually grant that title to the designated individual. Commenters that responded to this proposal, however, generally assumed the person designated to coordinate and oversee a financial institution's information security program would be required to have the qualifications, duties, responsibilities, and accompanying pay of a CISO as that position is generally understood in the information security field.[93] The position of CISO is generally limited to large companies with fairly complex information security systems, so the salary of this position is often very high.[94] Accordingly, many commenters argued hiring a CISO would be prohibitively expensive for many financial institutions.[95] Additionally, commenters argued the hiring of such an in-demand professional would be difficult because of a general shortage of such professionals available for hiring.[96]

By using the term ''CISO,'' the Commission did not intend to require all financial institutions hire a highly qualified professional with an extremely high salary, regardless of the financial institutions' size or complexity. The Proposed Rule required only that financial institutions designate a ''qualified individual'' to oversee and enforce their information security program, without specifying any particular level of experience, education, or compensation, or requiring any particular duties outside of overseeing the financial institution's information security program and other requirements specifically set forth in the Rule.[97] The use of the term ''CISO'' in the Proposed Rule, however, caused confusion about the requirements of this section. Accordingly, the Final Rule replaces the term ''CISO'' with ''Qualified Individual'' to refer to the individual designated under this section of the Rule.

The use of the term ''Qualified Individual'' is meant to clarify the only requirement for this designated individual is that he or she be qualified to oversee and enforce the financial institution's information security program. What qualifications are necessary will depend upon the size and complexity of a financial institution's information system and the volume and sensitivity of the customer information the financial institution

[84] Cisco Systems, Inc. (comment 51, NPRM), at 4; National Consumer Law Center and others (comment 58), at 2; Anonymous (comment 2, Workshop).

[85] Cisco Systems, Inc. (Comment 51, NPRM), at 4.

[86] Anonymous (comment 2, Workshop). The ISO/IEC 27001 standard is an information security standard issued by the International Organization for Standardization. *See* ISO/IEC 27001 Information Security Management, ISO, *https://www.iso.org/isoiec-27001-information-security.html* (last accessed 15 Dec. 2020).

[87] National Consumer Law Center and others (comment 58, NPRM), at 2.

[88] HITRUST (comment 18, NPRM), at 2; *see also* Consumer Reports (comment 52, NPRM), at 6–7 (discouraging the adoption of outside standards as a safe harbor for companies).

[89] Mortgage Bankers Association (comment 26, NPRM), at 2 (suggesting Rule be modified so financial institutions that use the NIST Cybersecurity Framework would be in de facto compliance with the Rule); *see also* National Pawnbrokers Association (comment 32, NPRM), at 6–7 (advocating for the adoption of safe harbors for small financial institutions without detailing what should be required to qualify for the safe harbor).

[90] Consumer Reports (comment 52, NPRM), at 6–7.

[91] Section 314.4(a).

[92] 84 FR 13165.

[93] U.S. Chamber of Commerce (comment 33, NPRM), at 10; National Automobile Dealers Association (comment 46), at 17–19; National Independent Automobile Dealers Association (comment 48, NPRM), at 5; ACA International (Comment 45, NPRM), at 8.

[94] *See. e.g.,* Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 78 (estimating the average annual salary of a CISO can range from $180,000 to upwards of $400,000).

[95] National Automobile Dealers Association (comment 46, NPRM), at 17–19; National Independent Automobile Dealers Association (comment 48, NPRM), at 5; U.S. Chamber of Commerce (comment 33, NPRM), at 10; ACA International (comment 45, NPRM), at 8.

[96] National Automobile Dealers Association (comment 46, NPRM), at 18–19; U.S. Chamber of Commerce (comment 33, NPRM), at 10; ACA International (comment 45, NPRM), at 8.

[97] 84 FR 13175.

possesses or processes. The Qualified Individual of a financial institution with a very small and simple information system will need less training and expertise than a Qualified Individual for a financial institution with a large, complex information system. The exact qualifications will depend on the nature of the financial institution's information system. Each financial institution will need to evaluate its own information security needs and designate an individual with appropriate qualifications to meet those needs.

The Commission believes, in many cases, financial institutions' current coordinators, whether their own employees or third-party contractors, may be qualified for this role.[98] Because the current Safeguards Rule requires financial institutions to designate an ''employee or employees to coordinate your information security program,'' financial institutions in compliance with that Rule will already have one or more information security coordinators. Although the current Rule does not expressly require that these coordinators be qualified for that position, the current Rule requires a financial institution to maintain ''appropriate'' safeguards, regularly test those safeguards, and evaluate and adjust the information security program in light of that testing.[99] In order to effectively comply with these ongoing requirements, a financial institution's coordinator must have some level of information security training and knowledge and, therefore, will likely be an appropriate Qualified Individual under the Final Rule. Accordingly, in many cases this amendment to the Rule will not require any additional hiring expenses.

In addition to explicitly requiring that the information security program coordinator be qualified for the role, the Commission proposed to require the designation of a single employee, as opposed to the multiple coordinators allowed by the existing Rule. Some commenters objected to this proposal on the grounds that it would interfere with financial institutions' flexibility in organizing their information security personnel.[100] For example, the Consumer Data Industry Association (''CDIA'') commented the designation of a single coordinator would interfere with financial institutions' ability to organize their program ''to share responsibilities among different personnel with different strengths.'' [101] Similarly, ACA International argued this requirement would prevent financial institutions from having multiple staff members share responsibilities for information security programs.[102]

Other commenters argued the designation of a single individual as the coordinator of the information security program provides no proven benefits over the use of multiple coordinators.[103] Similarly, NADA argued that, while the appointment of a single qualified individual might improve accountability, improving accountability does not improve security.[104] On the other hand, a group of consumer and advocacy groups including the National Consumer Law Center (''NCLC'') argued appointing a single individual as the coordinator of the information security program can increase security and prevent security events based on lack of accountability and poor coordination.[105]

The Commission retains the requirement to designate a single qualified individual, because it believes there are clear benefits to the designation of a single coordinator. Designating a single coordinator to oversee an information security program clarifies lines of reporting in enforcing the program, can avoid gaps in responsibility in managing data security, and improve communication.[106]

The Commission disagrees with the commenter who stated improved accountability does not lead to improved security. The goal of improving accountability is to ensure information security staff and financial institution management give the necessary attention and resources to information security. In addition, an individual that has clear responsibility for the strength of a financial institution's information security program will be accountable to improve the program and ensure it protects customer information.[107]

The major breach that occurred at national consumer reporting agency Equifax in 2017 demonstrates the importance of clear lines of reporting and accountability in management of information security programs. The U.S. House Committee on Oversight and Government Reform issued a report on the breach that identified Equifax's organization as one of the major causes of the breach.[108] The report indicated Equifax's division of responsibility for information security between two individuals that reported to two different company officers contributed to failures of communication, oversight, and enforcement that led to millions of consumers' data being compromised.[109] Increasing accountability for individuals and organizations can directly lead to improved security for customer information.

Finally, the Commission does not believe the requirement to designate a single Qualified Individual would

[98] Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 74 (stating car dealerships can rely on existing staff for this role); Remarks of Lee Waters, Safeguards Workshop Tr., *supra* note 17, at 78–79 (stating any dealership with any IT staff at all would have someone who could assume the role of ''qualified individual,'' perhaps requiring some additional research or outside help); Remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 81–82 (stating companies may use an existing employee for the role and ''for any areas where there may be skill gaps, that can be supplemented with either certifications or some type of education.'').

[99] 16 CFR 314.4.

[100] National Independent Automobile Dealers Association (comment 48, NPRM), at 5; Consumer Data Industry Association (comment 36, NPRM), at 5; National Association of Dealer Counsel (comment 44, NPRM), at 2; ACA International (comment 45, NPRM), at 7–8; Money Services Round Table (comment 53, NPRM), at 10; Gusto and others (Comment 11, Workshop), at 2; *see also* Remarks of James Crifasi, Safeguards Workshop TR, *supra* note 17, at 74 (stating ''when we're talking about a small and medium business [. . .] we really need to see that 'qualified individual' be a mix of folks'').

[101] Consumer Data Industry Association (comment 36, NPRM), at 5.

[102] ACA International (comment 45, NPRM), at 7–8. NPA raised similar concerns. National Pawnbrokers Association (comment 3, Workshop), at 2.

[103] Consumer Data Industry Association (comment 36, NPRM), at 5; National Automobile Dealers Association (comment 46, NPRM), at 19; ACA International (comment 45, NPRM), at 8.

[104] National *Automobile Dealers Association* (comment 46, NPRM), at 19.

[105] National Consumer Law Center and others (comment 58, NPRM), at 3 (arguing that a clear line of reporting with a single responsible individual could have prevented the Equifax consumer data breach).

[106] Remarks of Adrienne Allen, Safeguards Workshop Tr., *supra* note 17, at 182–84 (stating that without a single responsible individual, information security staff ''can fall into traps of each relying on someone else to make a hard call . . . [In a program without a single coordinator] issues can sometimes fall through the cracks.''); Remarks of Michele Norin, Safeguards Workshop Tr., *supra* note 17, at 184–85 (''I think it's extremely important to have a person in front of the information security program. I think that there are so many components to understand, to manage, to keep an eye on. I think it's difficult to do that if it's part of someone else's job. And so I found that it's extremely helpful to have a person in charge of that program just from a pure basic management perspective and understanding perspective.'').

[107] *See, e.g.,* Federal Trade Commission Staff Comment on the Preliminary Draft for the NIST Privacy Framework: A Tool for Improving Privacy through Enterprise Risk Management (Oct. 24, 2019), at 12–14 (suggesting NIST clarify that one person should be in charge of the program). *https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-preliminary-draft-nist-privacy-framework/p205400nistprivacyframeworkcomment.pdf.*

[108] U.S. House, Committee on Oversight and Government Reform, Majority Staff Report, The Equifax Data Breach, at 55–62, 115th Congress (Dec. 2018).

[109] *Id.*

prevent the approach of having multiple people responsible for different aspects of the program, as some commenters asserted. While the Qualified Individual appointed as the coordinator of the information security program would have ultimate responsibility for overseeing and managing the information security program, financial institutions may still assign particular duties and responsibilities to other staff members.[110] A financial institution may organize its personnel in teams or share decision making between individuals. Moreover, the Rule does not require this be the Qualified Individual's sole job—he or she may have other duties. The Rule requires only that one individual assume the ultimate responsibility for overseeing and enforcing the program.

Accordingly, the Final Rule requires designation of a single Qualified Individual, as proposed, but no longer uses the term ''CISO.''

Third-Party Coordinators

The Proposed Rule stated that the Qualified Individual would not need to be an employee of the financial institution, but could be an employee of an affiliate or a service provider. This change was intended to accommodate financial institutions that may prefer to retain an outside expert, lack the resources to employ a qualified person to oversee a program, or decide to pool resources with affiliates to share staff to manage information security. The Proposed Rule required, however, that to the extent a financial institution used a service provider or affiliate, the financial institution must still: (1) Retain responsibility for compliance with the Rule; (2) designate a senior member of its personnel to be responsible for direction and oversight of the Qualified Individual; and (3) require the service provider or affiliate to maintain an information security program that protects the financial institution in accordance with the Rule.

The Commission received one comment on this aspect of the provision. NADA argued that, because a senior member of a financial institution's personnel must be responsible for the oversight of a third-party Qualified Individual, the supervising individual would need to be an expert in information security, and the financial institution would still be required to hire an expensive employee to supervise the third-party Qualified Individual.[111] The Rule, however, does not require individuals responsible for overseeing third-party Qualified Individuals to be information security experts themselves. The senior personnel that oversees the third-party Qualified Individual is charged with supervising and monitoring the third-party so the financial institution is aware of its data security needs and the safeguards being used to protect its information systems. This person does not need to be qualified to coordinate the information security program him or herself. Technical staff are frequently supervised by employees or officers with limited technical expertise.[112] The Rule requires only the same responsibilities a supervisor would have in overseeing an in-house information security coordinator of a financial institution. Accordingly, the Commission adopts the proposed paragraph without modification.

Proposed Paragraph (b)

The NPRM proposed amending paragraph (b) to clarify a financial institution must base its information security program on the findings of its risk assessment by adding an explicit statement that financial institutions' ''information security program [shall be based] on a risk assessment.'' [113] In addition, the Proposed Rule removed existing § 314.4(b)'s requirement that the risk assessment must include consideration of specific risks [114] because these specific risks are set forth elsewhere in the Proposed Rule.[115] The Commission received no comments on this paragraph and adopts paragraph (b) as proposed.

Written Risk Assessment

Paragraph (b)(1) of the Proposed Rule required the risk assessment be written and include: (1) Criteria for the evaluation and categorization of identified security risks or threats the financial institution faces; (2) criteria for the assessment of the confidentiality, integrity, and availability of the financial institution's information systems and customer information, including the adequacy of the existing controls in the context of the identified risks or threats to the financial institution; and (3) requirements describing how identified risks will be mitigated or accepted based on the risk assessment and how the information security program will address the financial institution's risks. Commenters raised several concerns about the Proposed Rule's provisions on risk assessment, none of which merit changes to the Proposed Rule.

First, some commenters objected to the level of specificity of the Proposed Rule, with some arguing the requirements were too specific, and others arguing the requirements were not specific enough. With respect to the Proposed Rule being too specific, commenters such as ACA and U.S. Chamber of Commerce argued it removed financial institutions' flexibility in performing risk assessments.[116] The U.S. Chamber of Commerce contended, because the criteria are too specific, a risk assessment performed using them would not be ''sufficiently risk based.'' [117] CDIA expressed concern it was unclear ''what level of specificity is required'' in the written risk assessment and if detailed risk assessments are required, they ''could themselves become a roadmap for a security breach.'' [118]

In contrast, several other commenters recommended the Rule set forth more specific criteria for risk assessments. Inpher suggested the Commission add a requirement that risk assessments require financial institutions to examine ''technologies that are deployed by [financial institutions'] information security systems, and evaluate the feasibility'' of adopting ''privacy enhancing technologies'' that would better address vulnerabilities and thwart threats.[119] Inpher also recommended the Rule require financial institutions to conduct privacy impact assessments with ''specific guidelines to review internal data protection standards and adherence to fair information

[110] *See* Remarks of Adrienne Allen, Safeguards Workshop Tr., *supra* note 17, at 189–90 (noting that, even where there is a single point person, decision makers rarely operate ''in a vacuum.'').

[111] National *Automobile Dealers Association* (comment 46, NPRM), at 18.

[112] *See* Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 79–80 (stating that, in his work as a third-party information security service provider, he is often overseen by executives without technical backgrounds); *see also* Remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 105–06 (noting distinction in how executives and technical staff may understand their organizations' use of encryption); Remarks of Karthik Rangarajan, Safeguards Workshop Tr., *supra* note 17, at 196 (discussing challenges inherent in discussing technical issues with board members who lack a technical background)and at 211 (noting organizations can successfully manage their relationships with third-party service providers without ''becom[ing] experts'' in the services provided).

[113] Proposed 16 CFR 314.4(b).

[114] Proposed 16 CFR 314.4(b)(1), (2), and (3).

[115] *See, e.g.,* Proposed 16 CFR 314.4(c)(2) and (10) and (e).

[116] ACA International (comment 45, NPRM), at 12; U.S. Chamber of Commerce (comment 33, NPRM), at 10.

[117] U.S. Chamber of Commerce (comment 33, NPRM), at 10.

[118] Consumer Data Industry Association (comment 36, NPRM), at 5.

[119] Inpher, Inc. (comment 50, NPRM), at 4.

principles.'' [120] The Princeton Center suggested the Rule require risk assessments to include threat modeling and adopt the concept of defense in depth.[121] HALOCK Security Labs recommended the Rule specifically require ''a) That risk assessments should evaluate the likelihood of magnitudes of harm that result from threats and errors, b) That risk assessments should explicitly estimate foreseeable harm to consumers as well as to the covered financial institutions, c) That risk mitigating controls are commensurate with the risks they address, [and] d) That risk assessments estimate likelihoods and impacts using available data.'' [122]

The Commission believes the Proposed Rule's provisions on risk assessment strike the right balance between specificity and flexibility. The amendments provide only a high-level list of criteria the risk assessment must address. They essentially require that the financial institution identify and evaluate risks to its systems, evaluate the adequacy of its existing controls for addressing these risks, and identify how these risks can be mitigated. These are core requirements of any risk-assessment.[123] The Rule does not require any specific methodology or approach for performing the assessment. Financial institutions are free to perform the risk assessment using the method most suitable for their organization as long as that method meets the general requirements set forth in the Rule. [124] And while the Commission agrees the additional requirements suggested by some commenters may be beneficial in many, or even most, risk assessments, it believes a more flexible requirement will better allow financial institutions to find the risk assessment method that best fits their organization and will better accommodate changes in recommended approaches in the future.

In response to CDIA's concern about the risk assessment providing a roadmap for bad actors, certainly, the written risk assessment will include details about a financial institution's systems that could assist an attacker if obtained by the attacker. Accordingly, the risk assessment should be protected as any other sensitive information would be. The Commission does not view this concern as a reason not to create such a document. Indeed, the concern would apply to any written document that provides information regarding a financial institution's information security procedures, from a network diagram to written security code.

Second, some commenters argued implementing the risk-assessment provision as proposed would be too expensive and difficult for financial institutions.[125] For example, NADA argued the contemplated risk assessment would be very costly because the criteria set out in paragraph (b)(1) are ''well outside the scope of expertise of anyone but the most sophisticated IT professionals.'' [126] In response, although the Commission declines to modify the provision, it addresses NADA's concern in § 314.6 by exempting financial institutions that maintain information concerning fewer than 5,000 consumers from the specific requirements of paragraph (b)(1), and from the requirement to memorialize the risk assessment in writing. For those financial institutions that do not qualify for this exemption, the Commission believes they will be able to perform the required risk assessment in a manner that is practical and affordable for their institution. There are many resources available to financial institutions to aid in risk assessment, including service providers that can assist institutions of various sizes.[127]

While acknowledging there will be some cost to conducting a risk assessment, the Commission believes a properly conducted risk assessment is an essential part of a financial institution's information security program. The entire Safeguards Rule, both as it currently exists and as amended, requires that the information security program be based on a risk assessment. An information security program cannot properly guard against risks to customer information if those risks have not been identified and assessed.[128] The Commission believes this requirement properly emphasizes the importance of robust risk assessments, while providing financial institutions sufficient flexibility in performing these assessments. Finally, the Commission notes, because the current Rule also requires that a risk assessment be performed, financial institutions that have complied with the current Rule have already conducted a risk assessment. And, even if that risk assessment was not memorialized in writing, the work conducted for that risk assessment should be useful in performing future risk assessments.

Third, NADA objected to the requirement that the risk assessment describe how each identified risk will be ''mitigated or accepted,'' arguing it is not clear when it is appropriate to ''accept a risk.'' [129] NADA argued that documenting a decision to accept a risk would ''create a record that can be distorted and second guessed after the fact,'' and ''context is lost when it is written and reviewed after an incident has occurred.'' [130] The Rule does not require a financial institution to mitigate every risk identified, no matter how remote or insignificant. Instead, the Rule allows a financial institution to accept a risk, if its assessment of the risk reveals that the chance it will produce a security event is very small, if the consequences of the risk are minimal, or the cost of mitigating the risk far outweighs the benefit. In those cases, the financial institution may choose to accept the risk. A financial institution concerned that its decision to accept a risk will later be questioned may choose to set forth whatever context or

[120] *Id.*

[121] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 2.

[122] HALOCK Security Labs (comment 4, Workshop) at 2. *See* Rocio Baeza (comment 12, Workshop) at 2–3 (suggesting a detailed list of requirements for the risk assessment).

[123] *See, e.g.,* Remarks of Chris Cronin, Safeguards Workshop Tr., *supra* note 17, at 25 (stating that evaluating the likelihoods and impacts of potential security risks and evaluating existing controls is an important component of a risk assessment); Remarks of Serge Jorgensen, Safeguards Workshop Tr., *supra* note 17, at 29–30 (emphasizing the importance of risk assessments as tools for adjusting existing security measures to account for both current and future security threats); Nat. Inst. of Sci. & Tech., U.S. Dept. of Com., Special Publication 800–30 Rev. 1, Guide for Conducting Risk Assessments 1 (2012) (describing the purpose of risk assessments as the identification of and prioritization of risk in order to inform decision making and risk response).

[124] ACA International further argued because risk assessment criteria are generally understood, they do not need to be included in the Final Rule. ACA International (comment 45, NPRM). The Commission believes it is helpful to be clear about the criteria the risk assessment must contain, even if those criteria are commonly understood.

[125] National Association of Dealer Counsel (comment 44, NPRM), at 3; National Automobile Dealers Association (comment 46, NPRM), at 20.

[126] National Automobile Dealers Association (comment 46, NPRM), at 20.

[127] *See, e.g.,* Slides Accompanying Remarks of Rocio Baeza, in Safeguards Workshop Slides, *supra* note 72, at 27–28 (describing three different compliance models: In-house, outsource, and hybrid, with costs ranging from $199 per month to more than $15,000 per month); Slides Accompanying the Remarks of Brian McManamon, ''Sample Pricing,'' in Safeguards Workshop Slides, *supra* note 72, at 29 (estimating the cost of cybersecurity services based on number of endpoints: $2K–$5K per month for 25–250 endpoints; $5K–$15K for 250–750 endpoints; $15K–$30K for 750–1,000 endpoints; and $30K–$50K for 1,500–2,500 endpoints); *see also* Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 83–85.

[128] *See* Remarks of Chris Cronin, Safeguards Workshop Tr., *supra* note 17, at 48–49 (noting all information security frameworks and guidelines are based on risk analysis).

[129] National Automobile Dealers Association (comment 46, NPRM) at 20.

[130] *Id.*

explanation it sees fit in the written assessment.

Finally, while several commenters supported the idea of conducting ''periodic'' risk assessments as required by the Proposed Rule,[131] NADA objected it is unclear how often financial institutions need to conduct risk assessments under this section. [132] In order to be effective, a risk assessment must be subject to periodic reevaluation to adapt to changes in both financial institutions' information systems and changes in threats to the security of those systems. The Commission declines, however, to set forth a specific schedule for risk assessments. The Commission believes it would not be appropriate to set forth an inflexible schedule for periodic risk assessments because each financial institution must set its own schedule based on the needs and resources of its institution.

The Final Rule adopts § 314.4(b) as proposed.

Paragraph (c)

Proposed paragraph (c) retained the existing Rule's requirement for financial institutions to design and implement safeguards to control the risks identified in the risk assessment. In addition, it added more detailed requirements for what the safeguards must address (*e.g.,* access controls, data inventory, disposal, change management, monitoring). These specific requirements represent elements of an information security program that the Commission views as essential and should be addressed by all financial institutions.[133]

As a preliminary matter, Global Privacy Alliance (GPA) argued all of these elements should be made optional and financial institutions should be required only to take these elements ''into consideration'' when designing their information security programs.[134] While the Commission agrees it is important that the Rule allow financial institutions flexibility in designing their information security programs, these elements are such important parts of information security that each program must address them. For example, an information security program that has no access controls or does not contain any measures to monitor the activities of users on the systems cannot be said to be protecting the financial institution's systems. The Final Rule, therefore, continues to require each information security program to contain safeguards that address these elements, with modifications described below.

Access Controls

Proposed paragraph (c)(1) required financial institutions to ''place access controls on information systems, including controls to authenticate and permit access only to authorized individuals to protect against the unauthorized acquisition of customer information and to periodically review such access controls.''

Commenters suggested a number of modifications to this provision. First, GPA argued this provision should require controls on access to information, rather than on information systems.[135] Second, several commenters suggested adding further safeguards to the ''access control'' requirement. For example, the Princeton Center argued the Rule should adopt the ''Principle of Least Privilege,'' a principle that no user should have access greater than is necessary for legitimate business purposes.[136] Reynolds and Reynolds Company (Reynolds) suggested the Rule clarify that financial institutions must ''vet, control, and monitor user access to sensitive information.'' [137] Consumer Reports argued paragraph (c)(1) should be amended to control access not just to authorized users, but to further limit access to when such access is reasonably necessary.[138] ACE argued that any requirement for physical access control allow financial institutions to determine which locations should have restricted access, rather than limiting physical access to every building and office within, say, a college campus.[139] Finally, some commenters argued the proposed language was too vague,[140] particularly as it applied to vendor-supplied services.[141]

In response to the comments, the Commission makes a number of changes to this provision in the Final Rule. First, the Commission clarifies that the Rule requires access controls, not just for information systems, but for all customer information, whether it is housed in information systems or in physical locations. To streamline the Rule, the Final Rule combines the separate physical access controls requirement found in proposed paragraph (c)(3) with this paragraph. Physical access controls will generally be most important in situations in which sensitive customer information is kept in physical form (such as hard-copy loan applications, or printed consumer reports). It may also require physical restrictions to access machines that contain customer information (*e.g.,* locked doors and/or key card access to a computer lab).[142] The Commission declines to make any changes in response to ACE's concern that every physical location will need to be protected—as the Rule states, physical controls must be implemented to protect unauthorized access to customer information. Where no customer information exists, the Rule would not require physical controls.

Second, the Commission agrees with the commenters who advocated that the Rule implement the principle of least privilege. The Commission does not believe it is appropriate, for example, for larger companies to give all

[131] Inpher, *Inc.* (comment 50, NPRM), at 3; Global Privacy Alliance (comment 38, NPRM), at 11.

[132] National Automobile Dealers Association (comment 46, NPRM), at 20.

[133] NADA disagreed with the Commission's statement in the NPRM for the Proposed Rule that ''most financial institutions already implement'' the specific requirements in paragraph (c), stating that many financial institutions ''do not currently implement some or all of these measures.'' National Automobile Dealers Association (comment 46, NPRM), at 20. The Commission continues to believe most financial institutions institute some form of most of these measures, such as access control, secure disposal, and monitoring authorized users, based on its enforcement and business outreach experience. While NADA's statement that some financial institutions implement none of the measures may be true, this underlines the necessity of making these elements explicit requirements under the Rule, as these elements are necessary for a reasonable information security program for all financial institutions. Indeed, a financial institution that utilizes none of these elements and exercises no access control, no secure disposal procedures, and does not monitor users of its systems is unlikely to be in compliance with the current Rule.

[134] Global Privacy Alliance (comment 38, NPRM), at 6.

[135] Global Privacy Alliance (comment 38, NPRM), at 9–10.

[136] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 4–5.

[137] Reynolds and Reynolds Company (comment 7, Workshop), at 7.

[138] Consumer Reports (comment 52, NPRM), at 7.

[139] American Council on Education (comment 24, NPRM), at 10.

[140] National Automobile Dealers Association (comment 46, NPRM), at 23; National Independent Automobile Dealers Association (comment 48, NPRM), at 5; American Council on Education (comment 24, NPRM), at 10;

[141] National Independent Automobile Dealers Association (comment 48, NPRM), at 5; American Council on Education (comment 24, NPRM), at 10.

[142] NIADA suggested instituting physical access controls would cost a dealership $215,000 because each computer would need to have its own lockable cubicle and there would need to be lockable offices for all desks. *See* Remarks of Lee Waters, Safeguards Workshop Tr., *supra* note 17, at 76. As originally promulgated, the Rule already requires financial institutions implement ''physical safeguards that are appropriate to your size and complexity.'' 16 CFR 314.3. The Final Rule's requirement is consistent with that longstanding requirement. If computers have technical safeguards preventing unauthorized users from accessing customer information, they usually will not need to be in a lockable area, particularly if they are not generally left unattended and are not likely to be stolen. Similarly, desks would need to be in lockable offices only if they contain accessible paper records. A lockable file cabinet may be a more economical solution.

employees and service providers access to all customer information. Such overbroad access could create additional harm in the event of an intruder gaining access to a system by impersonating an employee or service provider. Accordingly, the Commission clarifies this in the Final Rule by adding a requirement that not only must a financial institution implement access controls, but it should also restrict access only to customer information needed to perform a specific function.

As to the suggestion the Commission impose monitoring requirements for access, that requirement exists in paragraph (c)(8). And as to the suggestion the requirement is too vague as to service providers, the Commission believes the Final Rule is clear: When a vendor accesses the financial institution's data or information systems, the financial institution must ensure appropriate access controls are in place. Separately, under paragraph (f), the financial institution must reasonably oversee the vendor's safeguards, which would necessarily include access controls for the vendor's system.

Finally, as to the suggestion the provision is vague generally, as discussed above, the Final Rule seeks to preserve flexibility in its provisions, both so that financial institutions can design programs appropriate for their systems and so that changes in technology or security practices will not render the Rule obsolete. The Commission believes maintaining less prescriptive requirements is the best way to achieve the goal of flexibility and protecting customer information.[143]

Accordingly, the Commission combines paragraphs (c)(1) and (3) from the Proposed Rule into revised paragraph (c)(1) of the Final Rule, which requires implementing and periodically reviewing access controls on customer information, including technical and, as appropriate, physical controls to (1) authenticate and permit access only to authorized users to protect against the unauthorized acquisition of customer information and (2) limit authorized users' access only to customer information that they need to perform their duties and functions, or, in the case of customers, to access their own information.[144]

System Inventory

In the NPRM, the Commission proposed to require the financial institution to ''[i]dentify and manage the data, personnel, devices, systems, and facilities that enable [the financial institution] to achieve business purposes in accordance with their relative importance to business objectives and [the financial institution's] risk strategy.'' [145] This requirement was designed to ensure the financial institution inventoried the data in its possession, inventoried the systems on which that data is collected, stored, or transmitted, and had a full understanding of the relevant portions of its information systems and their relative importance.[146] The Commission retains this provision in the Final Rule without modification.

Commenters raised two general objections to this provision. First, some commenters argued it was too vague and that it was not clear how such an inventory should be conducted or what systems should be included.[147] The Commission believes the language provides effective guidance while still allowing a variety of approaches by financial institutions in identifying systems involved in their businesses. This provision requires a financial institution to identify all ''data, personnel, devices, systems, and facilities'' that are a part of its business and to determine their importance to the financial institution. This inventory of systems must include all systems that are a part of the business so the financial institution can locate all customer information it controls, the systems connected to that information, and how they are connected. This inventory forms the basis of an information security program because a system cannot be protected if the financial institution does not understand its structure or know what data is stored in its systems.

Second, ACE suggested the scope of this provision should be limited to systems ''directly related to the privacy and security of 'customer information.' '' [148] The Commission declines to make this change because the purpose of this provision is to allow financial institutions to obtain a clear picture of their systems and to identify where customer information is kept and how it can be accessed. An inventory must examine all systems in order to identify all systems that contain customer information or are connected to systems that do. If a financial institution does not first examine all systems and instead limits the inventory to systems it considers to be directly related to security, it could give an incomplete picture of the financial institution's systems and could result in some customer information or ways to connect to that information being overlooked.[149]

The Commission adopts paragraph (c)(2) of the Proposed Rule as final, without modifications.

Access to Physical Location

Proposed paragraph (c)(3) would have required that financial institutions restrict access to physical locations containing customer information only to authorized individuals. The Final Rule combines this section with proposed paragraph (c)(1) in order to eliminate redundancy and clarify that access controls must consider both electronic and physical access.

Encryption

Proposed paragraph (c)(4) required financial institutions to encrypt all customer information, both in transit over external networks and at rest. The Proposed Rule allowed financial institutions to use alternative means to protect customer information, subject to review and approval by the financial institution's Qualified Individual.

Several commenters supported the inclusion of an encryption requirement.[150] In fact, some suggested

[143] NPA expressed concern about the effect of the Rule on pawnbrokers who the commenter stated are required by law to allow law enforcement access to their physical records. National Pawnbrokers Association (comment 32, NPRM), at 7. Nothing in the Rule conflicts with any such requirements. Law enforcement appropriately accessing customer information under a law that requires that access would be considered authorized use under those circumstances.

[144] As noted above, the Commission is also changing the term ''authorized individuals'' to ''authorized users.''

[145] Proposed 16 CFR 314.4(c)(2).

[146] *See, e.g.,* Complaint at 11, *FTC* v. *Wyndham Worldwide Corp.,* No. CV 2:12–cv–01365–SPL (D. Ariz. June 26, 2012) (alleging company failed to provide reasonable security by, among other things, failing to inventory computers connected to its network).

[147] National Automobile Dealers Association (comment 46, NPRM), at 23–24; American Financial Services Association (comment 41, NPRM), at 5; American Council on Education (comment 24, NPRM), at 10.

[148] American Council on Education (comment 24, NPRM), at 10.

[149] Another commenter criticized proposed paragraph (c)(2) because some financial institutions ''have no control'' over which networks they transmit customer information. National Pawnbrokers Association (comment 32, NPRM), at 7. Paragraph (c)(2) does not require a financial system to identify all networks over which it may transmit customer information. *See also, infra,* this document's discussion of NPA's comments on § 314.4(f) of the Final Rule, noting financial institutions are generally not required to oversee other entities' service providers over which they have no control.

[150] Inpher, Inc. (comment 50, NPRM), at 4; Princeton University Center for Information Technology Policy (comment 54, NPRM), at 3; Electronic Privacy Information Center (comment 55, NPRM), at 8; National Consumer Law Center and others (comment 58, NPRM), at 3.

the Proposed Rule did not go far enough in requiring encryption. Inpher suggested the Rule should require encryption of customer information when in use, in addition to when in transit or at rest.[151] The Princeton Center suggested requiring encryption of data while in transit over internal networks, in addition to requiring it for external networks, noting the blurring of the distinction between internal and external networks.[152]

In contrast, others argued encryption could be too expensive and technically challenging for some financial institutions and should not be required in all cases.[153] Indeed, GPA argued the Rule should not require encryption at all, financial institutions should be free to adopt other protective measures for customer information, and the Rule should allow financial institutions to ''determine the controls that are most appropriate for protecting the sensitive information that they handle.'' [154] Similarly, some commenters argued financial institutions should be required to encrypt customer information only when the risk to the customer information justifies it.[155] Others suggested encryption in more limited circumstances, such as on systems ''to which unauthorized individuals may have access,'' [156] for sensitive data,[157] or for data in transit.[158] The Mortgage Bankers Association argued encryption at rest is unnecessary because customer information at rest in a financial institution's system is sufficiently protected by controlling access to the system.[159] Two commenters stated guidelines issued by the Federal Financial Institutions Examination Council (FFIEC) do not require most banks to encrypt data at rest, unless the institution's risk assessment indicates such encryption is necessary.[160]

The Commission declines to modify the encryption requirement from the Proposed Rule. As to the comments that suggest the requirement should be relaxed, the Commission notes there are numerous free or low cost encryption solutions available to financial institutions, particularly for data in transit,[161] that make encryption a feasible solution in most situations. For data at rest, encryption is now cheaper, more flexible, and easier than ever before.[162] In many cases, widely used software and hardware have built-in encryption capabilities.[163]

In response to the argument that the Rule should not require encryption at rest because FFIEC guidelines do not require it, the Commission notes the Safeguards Rule is very different from the guidelines issued by the FFIEC. The depository financial institutions regulated by the banking agencies are subject to regular examinations by their regulator. The guidelines created by the FFIEC are designed to be used by the examiner, as part of those examinations, to evaluate the security of the financial institution; the examiner thus has a direct role in regularly verifying the financial institution has taken appropriate steps to protect its customer information. In contrast, the Safeguards Rule regulates covered financial institutions directly and must be usable by those entities to determine appropriate information security without any interaction between the financial institution and the Commission. The Commission does not have the ability to examine each financial institution and work with that institution to ensure their information security is appropriate. Therefore, a requirement that institutions encrypt information by default is appropriate for the Safeguards Rule, as the Commission believes encryption of customer information at rest is appropriate in most cases.

Finally, while some commenters suggested eliminating the encryption requirement for certain types of data (*e.g.,* non-sensitive) or certain categories of data (*e.g.,* data at rest), the Commission notes, as discussed in more detail above, the fact that an individual is a customer of a financial institution alone may be sensitive. In any event, the Rule provides financial institutions with flexibility to adopt alternatives to encryption with the approval of the Qualified Individual.

Similarly, the Commission declines to *extend* the encryption requirement to data in use or to data transmitted over internal networks, as some commenters suggested. The Commission does not believe the technology that would encrypt data while in use (as opposed to in transit or at rest) has been adopted widely enough at this time to justify mandating its use by all financial institutions under the FTC's jurisdiction. As to encryption of data transmitted over internal networks, the Commission acknowledges, due to changes in network design and the growth of cloud and mobile computing, the distinction between internal and external networks is less clear than it once was. However, the Commission believes requiring all financial institutions to encrypt all communications over internal networks would be unduly burdensome at this

[151] Inpher, Inc. (comment 50, NPRM), at 4.

[152] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 3.

[153] National Pawnbrokers Association (comment 32, NPRM), at 3; U.S. Chamber of Commerce (comment 33, NPRM), at 11; CTIA (comment 34, NPRM) at 10; Wisconsin Bankers Association (comment 37, NPRM), at 2.

[154] Global Privacy Alliance (comment 38, NPRM), at 7–8.

[155] Bank Policy Institute (comment 39, NPRM), at 14; Mortgage Bankers Association (comment 26, NPRM), at 6; Global Privacy Alliance (comment 38, NPRM), at 7–8.

[156] Bank Policy Institute (comment 39, NPRM), at 14.

[157] U.S. Chamber of Commerce (comment 33, NPRM), at 11; American Financial Services Association (comment 41, NPRM), at 5; ACA International (comment 45, NPRM), at 13; CTIA (comment 34, NPRM), at 10.

[158] Mortgage Bankers Association (comment 26, NPRM), at 6; Wisconsin Bankers Association (comment 37, NPRM), at 2; American Financial Services Association (comment 41, NPRM), at 5; Ken Shaurette (comment 19, NPRM), (suggesting the Commission consider whether ''databases, applications and operating systems are prepared to fully support full encryption without significant performance impact or ability to continue to function.''); National Automobile Dealers Association (comment 46, NPRM), at 25–26 (arguing the terms ''at rest'' and ''in transit'' are unclear).

[159] Mortgage Bankers Association (comment 26, NPRM), at 6.

[160] Wisconsin Bankers Association (comment 37, NPRM), at 2 (discussing FFIEC Information Technology Booklet); American Financial Services Association (comment 41, NPRM), at 5 (discussing FFIEC Cybersecurity Assessment Tool).

[161] *See* Remarks of Matthew Green, Safeguards Workshop Tr, *supra* note 17, at 225 (noting website usage of encryption is above 80 percent; ''Let's Encrypt'' provides free TLS certificates; and costs have gone down to the point that if a financial institution is not using TLS encryption for data in motion, it is making an unusual decision outside the norm); Remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 106 (''[T]he encryption of data in transit has been standard. There's no pushback with that.''); *see also* National Pawnbrokers Association (comment 3, Workshop), at 2 (''[I]n states that allow us to use technology for the receipt of information from consumer customers and software to print our pawn tickets and store information, we believe our members have access through their software providers to protections that comply with the Safeguards Rule.'').

[162] *See* Remarks of Wendy Nather, Safeguards Workshop Tr., *supra* note 17, at 267 (''we have a lot more options, a lot more technologies today than we did before that are making both of these solutions, both encryption and MFA, easier to use, more flexible, in some cases cheaper, and we should be encouraging their adoption wherever possible.''); Remarks of Matthew Green, Safeguards Workshop Tr., *supra* note 17, at 265–66 (''I think that we're in a great time when we've reached the point where we can actually mandate that encryption be used. I mean, years ago—I've been in this field for 15, you know, 20 years now, I guess. And, you know, encryption used to be this exotic thing that was very, very difficult to use, very expensive and not really feasible for securing information security systems. And we've reached the point where now it is something that's come to be and we can actually build well. So I'm really happy about that.'').

[163] *See* Remarks of Randy Marchany, Safeguards Workshop Tr., *supra* note 17, at 229–30 (noting encryption is already built into the Microsoft Office environment and a number of Microsoft products, such as Spreadsheets, Excel, Docs, and PowerPoint, support that encryption feature). Other applications that have encryption built in include database applications; app platforms iOS and Android; and development frameworks for web applications on banking sites.

time. There remain significant costs and technical hurdles to encrypting transmissions on internal networks that would not be reasonable to impose on all financial institutions, especially smaller institutions with simpler systems that might realize less benefit from this approach. While the Commission encourages financial institutions to consider whether it would be appropriate for them to encrypt the transmission of customer information over internal networks, it declines to require this for all financial institutions.[164]

Commenters pointed to three additional concerns about encryption, none of which the Commission finds persuasive. First, the Bank Policy Institute commented the encryption requirement would in fact weaken security by blocking surveillance of the information by the financial institution and requiring the ''broad distribution'' of encryption keys.[165] The Commission does not believe an encryption requirement would weaken security. Encryption is almost universally recommended by security experts and included in most security standards.[166] Further, new tools have been developed to address the issue the Bank Policy Institute has raised. Many financial institutions have monitoring tools on the edge of their networks to monitor data leaving the network. It used to be the case these network monitoring tools could not see the content of encrypted data as it left the corporate network and was transmitted to the internet. However, there are now tools available that can see the data as it departs the network, even if the data is encrypted.[167] Any marginal security costs of encryption are far outweighed by the benefits of rendering customer information unreadable.

Second, some commenters argued financial institutions should be able to implement alternatives to encryption without obtaining approval from the Qualified Individual.[168] The New York Insurance Association expressed concern financial institutions might feel they need to encrypt all customer information because of the risk that the alternative controls approved by the Qualified Individual would be ''second guessed'' in the event unencrypted data is compromised.[169] The Commission, however, believes this concern is a core element of information security based on risk assessment. Every aspect of an information security program is based on the judgment of the financial institution and its staff. The Qualified Individual's decision concerning alternate controls, like other decisions by the financial institution and its staff, will be subject to review in any enforcement action to determine whether the decision was appropriate. If the Qualified Individual is not required to make a formal decision, it is much more likely a decision not to encrypt information will be made even if there is no compensating control, or even made without the Qualified Individual's knowledge.

Third, the National Pawnbrokers Association (''NPA'') expressed concern that if pawnbrokers are required to encrypt customer information they may fall out of compliance with state and local regulations concerning transaction reporting.[170] NPA stated pawnbrokers are often required by state or local law to report every pawn transaction, along with nonpublic personally identifiable consumer information, to law enforcement, and the agencies that receive this information ''prefer to take this information electronically and in unencrypted forms.'' [171] The Commission believes if transmitting the information in unencrypted form is a preference of the agencies and not a requirement, then pawnbrokers can comply with both the Safeguards Rule and these laws by encrypting any transmissions that include customer information. If there are cases where a required transmission of customer information cannot be encrypted for technical reasons, then the pawnbroker's Qualified Individual will need to work with the law enforcement agency to implement alternative compensating controls to ensure the customer information remains secure during these transmissions.[172]

The Final Rule adopts this paragraph as paragraph (c)(3) without revision.

Secure Development Practices

Proposed paragraph (c)(5) required financial institutions to ''[a]dopt secure development practices for in-house developed applications utilized'' for ''transmitting, accessing, or storing customer information.'' In this paragraph, the Commission proposed requiring financial institutions to address the security of software they develop to handle customer information, as distinct from the security of their networks that contain customer information.[173] In addition, the Proposed Rule required ''procedures for evaluating, assessing, or testing the security of externally developed applications [financial institutions] utilize to transmit, access, or store customer information.'' This provision required financial institutions to take steps to verify that applications they use to handle customer information are secure.[174]

Some commenters argued evaluating the security of externally developed software would be too expensive or impractical for some financial institutions,[175] while others raised different concerns. The American Council on Education suggested, in cases in which a financial institution cannot obtain access to a software provider's code or technical

[164] The Commission believes transmissions of customer information to remote users or to cloud service providers should be treated as external transmissions, as those transmissions are sent out of the financial institution's systems.

[165] Bank Policy Institute (comment 39, NPRM), at 13–14.

[166] *See, e.g., Payment Card Industry (PCI) Data Security Standard Requirements and Security Assessment Procedures Version 3.2.1,* PCI Security Standards Council (May 2018), *https://www.pcisecuritystandards.org/document_library* (last accessed 30 Nov. 2020) (Requirement 4 encrypt transmission of cardholder data across open, public networks).

[167] *See, e.g., Encrypted Traffic Management,* Broadcom Inc., *https://www.broadcom.com/products/cyber-security/network/encrypted-traffic-management* (last accessed 30 Nov. 2020); *SSL Visibility,* F5, Inc., *https://www.f5.com/solutions/application-security/ssl-visibility* (last accessed 30 Nov. 2020).

[168] Bank Policy Institute (comment 39, NPRM), at 14; New York Insurance Association (comment 31, NPRM), at 1.

[169] New York Insurance Association (comment 31, NPRM) at 1.

[170] National Pawnbrokers Association (comment 3, Workshop), at 2–3.

[171] *Id.* at 2.

[172] NADA suggested it is not clear how the encryption requirement will apply to customer information held on a service provider's system or on the systems of the subcontractors of the service provider. National Automobile Dealers Association (comment 46, NPRM), at 21–22. The Commission believes the Final Rule lays out a financial institution's obligations in this situation: It requires customer information be encrypted unless infeasible. Section 314.4(e), in turn, requires financial institutions to require service providers to implement and maintain appropriate safeguards by contract and to periodically assess the continued adequacy of those measures. A financial institution that uses a service provider to store and process customer information must require that service provider to encrypt that information and periodically determine whether it continues to do so. If it is infeasible for the service provider to meet these requirements then the financial institution's Qualified Individual must work with the service provider to develop compensating controls or cease doing business with the service provider.

[173] *See, e.g.,* Complaint, *FTC* v. *D-Link Systems, Inc.,* No. 3:17–CV–00039–JD (N.D. Cal. March 20, 2017) (alleging company failed to provide reasonable security when it failed to adequately test the software on its devices).

[174] *See, e.g.,* Complaint, *Lenovo,* FTC No. 152–3134 (January 2, 2018) (alleging company failed to provide reasonable security by failing to properly assess and address security risks caused by third-party software).

[175] American Council on Education (comment 24, NPRM), at 11; National Automobile Dealers Association (comment 46, NPRM), at 26–27.

infrastructure, then evaluating the security of its software is infeasible.[176] NADA further suggested in order to evaluate the security of software, financial institutions would need to hire an expensive IT professional.[177]

The Commission does not agree with these assertions. Evaluating the security of software does not require access to the source code of that software or access to the provider's infrastructure. For example, a provider can supply the steps it took to ensure the software was secure, whether it uses encryption to transmit information, and the results of any testing it conducted. In addition, there are third party services that assess software. An institution can also set up automated searches regarding vulnerabilities, patches, and updates to software listed on the financial institution's inventory. The exact nature of the evaluation required will depend on the size of the financial institution and the amount and sensitivity of customer information associated with the software. If the software will be used to handle large amounts of extremely sensitive information, then a more thorough evaluation will be warranted. Likewise, the nature of the software used will also affect the evaluation. Software that has been thoroughly tested by third parties may need little more than a review of the test results, while software that has not been widely used and tested will require closer examination.

The Commission adopts proposed paragraph (c)(5) as paragraph (c)(4) of the Final Rule.

Multi-Factor Authentication

Proposed paragraph (c)(6) required financial institutions to ''implement multi-factor authentication for any individual accessing customer information'' or ''internal networks that contain customer information.'' [178] The Proposed Rule would have allowed financial institutions to adopt a method other than multi-factor authentication that offers reasonably equivalent or more secure access controls with the written permission of its Qualified Individual. In the Final Rule, the Commission retains the general requirements of proposed paragraph (c)(6) as paragraph (c)(5), with some modifications described below.

Although several commenters expressed support for including a multi-factor authentication requirement in the Final Rule,[179] others opposed such a requirement. For example, ACE argued a blanket requirement mandating multi-factor authentication for all institutions of all sizes and complexities is not the best solution.[180] The National Independent Automobile Dealers Association (NIADA) commented the costs of multi-factor authentication would be too high for some financial institutions because it would need to be built into their information systems from scratch.[181] NIADA also argued adopting multi-factor authentication would disrupt a financial institution's activities as employees had to ''jump through multiple hoops to log in.'' [182] Cisco Systems, Inc. argued that while multi-factor authentication is an effective safeguard, it should not be specifically required by the Rule because, while it is currently good security practice, in the future multi-factor authentication may become outdated, and that allowing financial institutions to satisfy the Rule in this way could result in inadequate protection.[183]

Other commenters did not dispute the benefits of multi-factor authentication generally, but argued the Rule should limit the multi-factor authentication requirement. Some of these commenters stated the Rule should only require multi-factor authentication when the financial institution's risk assessment justifies it.[184] Others argued there should be a distinction between internal access and external access. For example, some commenters argued the Rule should not require multi-factor authentication when a user accesses customer information from an internal network,[185] because there are other controls on internal access that make multi-factor authentication unnecessary.[186] Another commenter stated requiring multi-factor authentication when a customer accesses their information from an external network could create problems for some institutions.[187] Finally, the Princeton Center argued the Rule should be amended to clarify that multi-factor authentication should be required for internal and external networks.[188]

Finally, CTIA took issue with the proposed requirement that the Qualified Individual be permitted to approve ''reasonably equivalent or more secure'' controls if multi-factor authentication is not feasible, suggesting instead that Qualified Individuals be permitted to approve ''effective alternative compensating controls.'' [189]

The Commission disagrees with the commenters who stated the Rule should not include a multi-factor authentication requirement. As to costs, many affordable multi-factor authentication solutions are available in the marketplace.[190] Most financial institutions will be able to find a solution that is both affordable and workable for their organization. In the cases when that it is not possible, the

[176] American Council on Education (comment 24, NPRM), at 11.

[177] National Automobile Dealers Association (comment 46, NPRM), at 26–27.

[178] Proposed 16 CFR 314.4(c)(6).

[179] Justine Bykowski (comment 12, NPRM); Princeton University Center for Information Technology Policy (comment 54, NPRM), at 6–7; Electronic Privacy Information Center (comment 55, NPRM), at 8; National Consumer Law Center and others (comment 58, NPRM), at 2; *see also* Remarks of Wendy Nather, Safeguards Workshop Tr., *supra* note 17, at 240–41 (discussing the security poverty line).

[180] American Council on Education (comment 24, NPRM), at 11–12.

[181] National Independent Automobile Dealers Association (comment 48, NPRM), at 6; *see also* Ken Shaurette (comment 19, NPRM) (questioning whether multi-factor authentication is appropriate for all financial institutions).

[182] National Independent Automobile Dealers Association (comment 48, NPRM), at 6.

[183] Cisco Systems, Inc. (comment 51, NPRM), at 2–4.

[184] Bank Policy Institute (comment 39, NPRM), at 11–13; Global Privacy Alliance (comment 38, NPRM), at 8.

[185] Electronic Transactions Association (comment 27, NPRM), at 3 n.1; U.S. Chamber of Commerce (comment 33, NPRM), at 11; CTIA (comment 34, NPRM), at 11; Global Privacy Alliance (comment 38, NPRM), at 8; Bank Policy Institute (comment 39, NPRM), at 12; National Automobile Dealers Association (comment 46, NPRM), at 28; National Independent Automobile Dealers Association (comment 48, NPRM), at 6; New York Insurance Association (comment 31, NPRM), at 1.

[186] CTIA (comment 34, NPRM), at 11; Electronic Transactions Association (comment 27, NPRM), at 3 n.1; U.S. Chamber of Commerce (comment 33, NPRM), at 11.

[187] American Council on Education (comment 24, NPRM), at 11.

[188] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 6–7; *see also* Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 102 (stating his company TECH LOCK supports requiring multi-factor authentication for users connecting from internal networks).

[189] CTIA (comment 34, NPRM), at 11–12; *see also* Electronic Transactions Association (comment 27, NPRM) at 3 (suggesting use of the term ''alternative compensating controls'').

[190] *See, e.g.,* Slides Accompanying Remarks of Brian McManamon, ''MFA/2FA Pricing (Duo),'' in Safeguards Workshop Slides, *supra* note 72, at 30 (setting forth prices for multi-factor/two-factor services from Duo, including free services for up to ten users); Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 102–03; Slides Accompanying Remarks of Lee Waters, ''Estimated Costs of Proposed Changes,'' in Safeguards Workshop Slides, *supra* note 72, at 26 estimating costs of MFA to be $50 for smartcard or fingerprint readers, and $10 each per smartcard); Slides Accompanying Remarks of Wendy Nather, ''Authentication Methods by Industry,'' in Safeguards Workshop Slides, *supra* note 72, at 37 (chart showing the use of MFA solutions such as Duo Push, phone call, mobile passcode, SMS passcode, hardware token, Yubikey passcode, and U2F token in industries such as financial services and higher education); Remarks of Wendy Nather, Safeguards Workshop Tr., *supra note 17,* at 233–34.

Rule allows financial institutions to adopt reasonably equivalent controls.[191]

As to potential disruptions requiring multi-factor authentication may cause, the Commission notes that many organizations, both financial institutions and otherwise, currently require employees to use multi-factor authentication without major disruption.[192] Many multi-factor authentication systems are available that do not materially increase the time it takes to log into a system as compared to the use of only a password.[193] In short, multi-factor authentication is an extremely effective way to prevent unauthorized access to a financial institution's information system,[194] and its benefits generally outweigh any increased time it takes to log into a system. In those situations when the need for quick access outweighs the security benefits of multi-factor authentication, the Rule allows the use of reasonably equivalent controls.

Finally, although the Commission agrees the Rule should not lock financial institutions into using outmoded or obsolete technologies, the basic structure of using multiple factors to identify a user is unlikely to be rendered obsolete in the near future. The Rule's definition of multi-factor authentication addresses only this principle and does not require any particular technology or technique to achieve it. This should allow it to accommodate most changes in information security practices. In the event of an unforeseen change to the information security environment that would discount the value of multi-factor authentication, the Commission will adjust the Rule accordingly.[195]

The Commission agrees with the commenter who stated multi-factor authentication is justified both when external users, such as customers, and internal users, such as employees, access an information system. Multi-factor authentication can prevent many attacks focused on using stolen passwords from both employees and customers to access customer information. Other common attacks on information systems, such as social engineering or brute force password attacks, target employee credentials and use those credentials to get access to an information system.[196] These attacks can usually be stopped through the use of multi-factor authentication. Accordingly, the Final Rule requires multi-factor authentication whenever any individual—employee, customer or otherwise—accesses an information system. If a financial institution determines it is not the best solution for its information system, it may adopt reasonably equivalent controls with the approval of the Qualified Individual.

The Commission recognizes the language of the Proposed Rule may have created some confusion by its use of the term ''internal networks'' to define the systems affected by the multi-factor authentication requirement, instead of the term ''information systems'' as used other places in the Rule.[197] In addition, the Commission agrees with commenters that argued separating the multi-factor authentication into two sentences created confusion.[198] Accordingly, the Commission modifies paragraph (c)(5) of the Final Rule, which was proposed as paragraph (c)(6), to require financial institutions to ''[i]mplement multi-factor authentication for any individual accessing any information system, unless your Qualified Individual has approved in writing the use of reasonably equivalent or more secure access controls.''

Finally, the Commission declines to adopt CTIA's proposed alternative that would allow Qualified Individuals to approve ''effective alternative compensating controls,'' even if they are not ''reasonably equivalent or more secure'' than multi-factor authentication. Given the important role multi-factor authentication has in access control, any alternative measure should provide at least as much protection as multi-factor authentication.[199]

Audit Trails

Proposed paragraph (c)(7) required information security programs to include audit trails designed to detect and respond to security events.[200] Audit trails are chronological logs that show who has accessed an information system and what activities the user engaged in during a given period.[201]

Some commenters supported this requirement.[202] The Princeton Center noted audit trails are ''crucial to designing effective security measures

[191] *See also* Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 103–04 (noting even where legacy systems do not support multi-factor authentication, alternative measures can be used and ''it's things that can easily be done.'')

[192] *See, e.g.,* Remarks of Randy Marchany, Safeguards Workshop Tr., *supra* note 17, at 236–38 (describing how Virginia Tech implemented multi-factor authentication in 2016 for its more than 156,000 users); Slides Accompanying Remarks of Wendy Nather, ''Authentication Methods by Industry,'' in Safeguards Workshop Slides, *supra* note 72, at 37 demonstrating the types of multi-factor authentication used by health care, financial services, higher education and the Federal Government); Remarks of Wendy Nather, Safeguards Workshop Tr., *supra* note 17, at 233–35.

[193] *See* Remarks of Wendy Nather, Safeguards Workshop Tr., *supra* note 17, at 234 (describing how a phone call to a landline is popular in some segments).

[194] *See, e.g.,* Remarks of Matthew Green, Safeguards Workshop Tr., *supra* note 17, at 266 (explaining passwords are not enough of an authentication feature but when MFA is used and deployed, the defenders can win against attackers); *id.* at 239 (describing how because smart phones have modern secure hardware processors, biometric sensors and readers built in, increasingly consumers can get the security they need through the devices they already have by storing cryptographic authentication keys on the devices and then using the phone to activate them).

[195] The Mortgage Bankers Association expressed concern the Proposed Rule would not allow the use of a single-sign on process, where a user is given access to multiple applications with the use of one set of credentials. Mortgage Bankers Association (comment 26, NPRM), at 7. The Commission does not view the Rule as preventing such a system, if the user has used multi-factor authentication to access the system and the system is designed to ensure any user of a given application has been subjected to multi-factor authentication.

[196] *See* Remarks of Pablo Molina, Safeguards Workshop Tr., *supra* note 17, at 30 (mentioning ''phishing,'' or social engineering, as a common type of cybersecurity attack); Remarks of Lee Waters, Safeguards Workshop, *supra* note 17, at 91 (same); Remarks of Michele Norin, Safeguards Workshop Tr., *supra* note 17, at 179 (same); *see also* Cyber Div., Fed. Bureau of Investigation, *Private Industry Notification No. 20200303–001, Cyber Criminals Conduct Business Email Compromise through Exploitation of Cloud-Based Email Services, Costing U.S. Businesses Over Two Billion Dollars,* (March 2020), *https://www.ic3.gov/media/news/2020/200707-4.pdf,* at 1–2, (last accessed 1 Dec. 2020) (''Between January 2014 and October 2019, the Internet Crime Complaint Center (IC3) received complaints totaling over $2.1 billion in actual losses from [Business Email Compromise (''BEC'')] scams targeting the largest [cloud-based email] platforms. Losses from BEC scams overall have increased every year since IC3 began tracking the scam in 2013 and have been reported in all 50 states and in 177 countries.'').

[197] Consumer Data Industry Association (comment 36, NPRM), at 6–7; Cisco Systems, Inc. (comment 51, NPRM), at 3–4.

[198] Bank Policy Institute (comment 39, NPRM), at 11.

[199] NADA argued, for financial institutions that have appointed a third party to act as their information security coordinator, this provision would require the institution to turn over decisionmaking to someone ''with no stake in the business outcome.'' National Automobile Dealers Association (comment 46, NPRM), at 29–30. This concern misinterprets the role of the Qualified Individual. Whether the Qualified Individual is inside the company or at a third-party company, that individual will report to and be supervised by senior management of a financial institution (unless the Qualified Individual is the head of the financial institution). If a Qualified Individual recommends a safeguard that would not be practical for the business, the financial institution is not required to adopt this safeguard but can use an alternative adequate safeguard that will be functional. Indeed, when it comes to third parties, the Rule specifically requires someone in the financial institution direct and oversee the third party.

[200] Proposed 16 CFR 314.4(c)(7).

[201] *See* Information Technology Laboratory Computer Security Resource Center, *Glossary,* National Institute of Standards and Technology, *https://csrc.nist.gov/glossary/term/audit-trail* (last accessed Dec. 2, 2020).

[202] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 8; Electronic Privacy Information Center (comment 55, NPRM), at 8.

that allow institutions to detect and respond to security incidents.'' [203] It also stated audit trails ''help understand who has accessed the system and what activities the user has engaged in.'' [204]

Other commenters argued this requirement imposed unclear obligations or would not improve security.[205] For example, GPA commented the Proposed Rule conflated the use of logs to reconstruct past events and the active use of logs to monitor user activity.[206] The American Financial Services Association argued adding logging capabilities to some legacy systems would be expensive and difficult.[207] Another commenter argued the increased use of cloud storage would mean that financial institutions might not have access to any audit trails.[208] In addition, NADA argued it did not believe maintenance of logs would increase security but would instead create records that could be sought by parties ''seeking to place blame'' for breaches.[209]

The Commission believes logging user activity is a crucial component of information security because in the event of a security event it allows financial institutions to understand what was accessed and when. However, the term ''audit trails'' may have been unclear in this context. In order to clarify that logging user activity is a part of the user monitoring process, the Final Rule does not include paragraph (c)(7) of the Proposed Rule and instead modifies the user monitoring provision to include a requirement to log user activity.[210] By putting the ''monitoring'' and ''logging'' requirements together, the Final Rule provides greater clarity on the comment raised by the GPA: Financial institutions are expected to use logging to ''monitor'' active users and reconstruct past events.

Disposal Procedures

Proposed paragraph (c)(8) required financial institutions to develop procedures for the secure disposal of customer information that is no longer necessary for their business operations or other legitimate business purposes.[211] The Proposed Rule allowed the retention of information when retaining the information is required by law or where targeted disposal is not feasible.

Some commenters supported the inclusion of a disposal requirement as proposed or suggested that the disposal requirements should be strengthened.[212] Consumer Reports argued financial institutions should be required to dispose of customer information when it is no longer needed for the business purpose for which it was gathered.[213] The Princeton Center suggested the Rule require disposal after a set period unless the company can demonstrate a current need for the data and that financial institutions periodically review their data practices to minimize their data retention.[214]

Several other commenters opposed the disposal requirement as set forth in the Proposed Rule. Some argued the requirement to dispose of information goes beyond the Commission's authority under the GLB Act.[215] NADA argued the GLB Act does not ''contain[ ] any authority to require financial institutions to delete any information'' and a requirement to have procedures to delete information for which a company has no legitimate business purpose would constitute a ''new privacy regime.'' [216] The American Financial Services Association (AFSA) stated the requirement was too prescriptive and the Rule should allow financial institutions to retain information as long as that retention complies with the retention policy created by the financial institution.[217] AFSA further argued the proposed requirement exceeds the Federal banking standards, pointing to the FFIEC Cybersecurity Assessment Tool, which sets disposal of records ''according to documented requirements and within expected time frames'' as a baseline requirement for access and data management.[218]

Yet other commenters suggested modifying the requirement. NADA argued that if there was to be a disposal requirement, then it should be modeled after the Disposal Rule, which requires businesses to properly dispose of consumer reports, but does not have an explicit requirement to dispose of information on any particular schedule.[219] ACE suggested modifying the Proposed Rule to require disposal of information only where there is no longer any ''legitimate purpose'' rather than any ''legitimate business purpose.'' [220] It argued in some cases a financial institution may have legitimate purposes for retaining information that are not readily defined as ''business'' purposes, such as the retention of data by educational institutions for institutional research or student analytics.[221]

The Commission believes requiring the disposal of customer information for which the financial information has no legitimate business purpose is within the authority granted by the GLB Act to protect the security of customer information. The disposal of records, both physical and digital, can result in exposure of customer information if not performed properly.[222] Similarly, if records are retained when they are no longer necessary, there is a risk those records will be subject to unauthorized access. The risk of unauthorized access may be reasonable where the retention of data provides some benefit. In situations where the information is no longer needed for a legitimate business purpose, though, the risk to the customer information becomes unreasonable because the retention is no longer benefiting the customer or financial institution. Disposing of unneeded customer information, therefore, is a vital part of protecting customer information and serves the purpose of the GLB Act.[223]

[203] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 8.

[204] *Id.*

[205] National Automobile Dealers Association (comment 46, NPRM), at 30–31; National Independent Automobile Dealers Association (comment 48, NPRM), at 6; American Financial Services Association (comment 41, NPRM), at 6; Global Privacy Alliance (comment 38, NPRM), at 11.

[206] Global Privacy Alliance (comment 38, NPRM), at 11.

[207] American Financial Services Association (comment 41, NPRM), at 6.

[208] American Council of Education (comment 24, NPRM), at 12.

[209] National Automobile Dealers Association (comment 46, NPRM), at 30–31.

[210] *See* Final Rule, 16 CFR 314.4(c)(8).

[211] Proposed 16 CFR 314.4(c)(8).

[212] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 8; Electronic Privacy Information Center (comment 55, NPRM), at 8; Consumer Reports (comment 52, NPRM), at 7.

[213] Consumer Reports (comment 52, NPRM), at 7–8.

[214] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 8–9.

[215] National Automobile Dealers Association (comment 46, NPRM), at 31; National Independent Automobile Dealers Association (comment 48, NPRM), at 6.

[216] National Automobile Dealers Association (comment 46, NPRM), at 31–32.

[217] American Financial Service Association (comment 41, NPRM), at 6.

[218] *Cybersecurity Assessment Tool,* FFIEC, *https://www.ffiec.gov/pdf/cybersecurity/FFIEC_CAT_May_2017_Cybersecurity_Maturity_June2.pdf* at 37 (last visited December 3, 2020).

[219] National Automobile Dealers Association (comment 46, NPRM), at 32.

[220] American Council on Education (comment 24, NPRM), at 12.

[221] *Id.*

[222] *See, e.g.,* Complaint, *Rite Aid Corp.,* FTC No. 072–3121 (November 22, 2010) (alleging company failed to provide reasonable data security when it failed to implement policies and procedures to dispose securely of personal information).

[223] As to the Princeton Center's suggestion financial institutions periodically review their disposal practices (Princeton University Center for Information Technology Policy (comment 54, NPRM), at 8–9), the Commission believes this

Continued

The Commission disagrees with commenters who suggested narrowing the disposal requirement or doing away with it altogether. As noted above, although no disposal requirement appears in FFIEC guidelines, those guidelines represent a different regulatory approach and are not an appropriate model for the Safeguards Rule.

Finally, as to setting retention periods or narrowing the legitimate business purposes for which financial institutions may retain customer information, the Commission recognizes financial institutions need some flexibility. Whereas customers may want to, for example, access and transfer older data in some circumstances, in other circumstances, retaining such data would not be consistent with any legitimate business purpose. The Commission believes the Princeton Center's recommendation that companies be required to delete information after a set period unless the information is still needed for a legitimate business purpose properly balances the needs of financial institutions with the need to protect customer information. Thus, the Commission modifies proposed paragraph (c)(6) to require the deletion of customer information two years after the last time the information is used in connection with providing a product or service to the customer unless the information is required for a legitimate business purpose as paragraph (c)(6)(i) of the Final Rule. In addition, paragraph (c)(6)(ii) of the Final Rule requires financial institutions to periodically review their policies to minimize the unnecessary retention of information.

Change Management

Proposed paragraph (c)(9) required financial institutions to adopt procedures for change management.[224] Change management procedures govern the addition, removal, or modification of elements of an information system.[225] This paragraph required financial institutions to develop procedures to assess the security of devices, networks, and other items to be added to their information system, or the effect of removing such items or otherwise modifying the information system. For example, a financial institution that adds additional servers or other machines to its information system would need to evaluate the security of the new devices and the effect of adding them to the existing network.

Some commenters supported this requirement,[226] while others stated it was too broad and would impose unnecessary burdens on financial institutions.[227] In particular, NADA argued financial institutions that have not made changes in their systems ''for some time'' should not be required to create procedures for change management.[228] ACE argued including a change management requirement is unnecessary because such a requirement is ''generally incorporated into an organization's IT operations'' for non-security purposes and the security considerations of those changes will be considered as part of those procedures.[229]

Alterations to an information system or network introduce heightened risk of cybersecurity incidents;[230] thus, it is important to expressly require change management to be a part of an information security program. The Commission agrees with ACE that many financial institutions will already have change management procedures in place. If those procedures adequately consider security issues involved in the change, then they may satisfy this requirement.

As to the comment a financial institution that has not made changes to its environment in some time should not be required to have change management processes, the Commission disagrees. Few information systems can remain unchanged for a significant period of time, given the changing technical requirements for business and security. Indeed, NADA acknowledges financial institutions will need to ''adapt[] their programs to keep up with changes in data security.''[231] For this reason, all financial institutions must have procedures for when the changes occur. As with all of the requirements of the Rule, though, the exact nature of these procedures will vary depending on the size, complexity and nature of the information system. A simple system may have equally simple change management procedures.

The Commission adopts this proposed paragraph as paragraph (c)(7) of the Final Rule without change.

System Monitoring

Proposed paragraph (c)(10) required financial institutions to implement policies and procedures designed ''to monitor the activity of authorized users and detect unauthorized access or use of, or tampering with, customer information by such users.''[232] The Proposed Rule required financial institutions to take steps to monitor those users and their activities related to customer information in a manner adapted to the financial institution's particular operations and needs.

NADA stated this requirement would create unnecessary expense because it would require financial institutions to ''continually monitor all authorized use'' and would mean ''yet more new employees or third-party IT consultants.''[233] The Commission disagrees, however, noting that monitoring of system use can be automated.[234] There is no requirement a separate staff member would be required to exclusively monitor system use.

In addition, one commenter stated monitoring the use of paper files is impossible and should be excluded from this provision.[235] The Commission acknowledges monitoring of paper records is qualitatively different than the monitoring of electronic records. This requirement goes hand in hand with limiting access to documents, whether electronic or paper. For example, if an institution has a file room and access to the room is limited to particular employees (*e.g.,* the payroll office), the institution should have measures in place to ensure those access controls are in fact being utilized (*e.g.,* sign in with front desk, logging of key card access, security camera).

As discussed above, this paragraph is amended to also require the logging of user activity, but is otherwise adopted as proposed as paragraph (c)(8).

requirement is already encompassed in the requirement contained in § 314.4(g) to periodically review their safeguards overall.

[224] Proposed 16 CFR 314.4(c)(9).

[225] *See, e.g., Change Management,* Rutgers OIT Information Security Office, *https://rusecure.rutgers.edu/content/change-management* (last accessed 1 Dec. 2020).

[226] Electronic Privacy Information Center (comment 55, NPRM), at 8; National Consumer Law Center and others, (comment 58, NPRM) at 3.

[227] American Council on Education (comment 24, NPRM), at 12–13; National Automobile Dealers Association (comment 46, NPRM), at 33.

[228] National Automobile Dealers Association (comment 46, NPRM), at 32–33.

[229] American Council on Education (comment 24, NPRM), at 12.

[230] *See* Remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 95 (''[E]very time there is a change to any of these [network] environments, that is creating additional risk.''); Remarks of Scott Wallace, Safeguards Workshop Tr., *supra* note 17, at 147–48 (giving an example of an incident in which network changes led to the exposure of sensitive information); Remarks of Matthew Green, Safeguards Workshop Tr., *supra* note 17, at 252 (noting it is ''a little dangerous'' to make ''major changes'' to an information system at a time of heightened stress).

[231] National Automobile Dealers Association (comment 46, NPRM), at 33 n.96.

[232] Proposed 16 CFR 314.4(c)(10).

[233] National Automobile Dealer Association (comment 46, NPRM), at 33.

[234] *See* Remarks of Nicholas Weaver, Safeguards Workshop Tr., *supra* note 17, at 124–25.

[235] American Financial Services Association (comment 41, NPRM), at 6.

Proposed Paragraph (d)

Proposed paragraph (d)(1) retained the current Rule's requirement that financial institutions ''[r]egularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures, including those to detect actual and attempted attacks on, or intrusions into, information systems.''

Proposed paragraph (d)(2) provided further detail to this requirement by stating the monitoring must take the form of either ''continuous monitoring'' or ''periodic penetration testing and vulnerability assessments.'' The proposal explained continuous monitoring is any system that allows real-time, ongoing monitoring of an information system's security, including monitoring for security threats, misconfigured systems, and other vulnerabilities.[236] For those who elected to engage in periodic penetration testing and vulnerability assessment, the proposal required penetration testing at least once annually (or more frequently if called for in the financial institution's risk assessment) and vulnerability assessments at least twice a year.[237]

Some commenters thought the proposal went too far in requiring continuous monitoring or penetration and vulnerability testing, while others thought the proposal did not go far enough. On one hand, ACE argued continuous monitoring is too burdensome and difficult for some financial institutions,[238] particularly those with ''highly decentralized systems,'' such as colleges and universities, which could be required to monitor their entire system.[239] ACE further suggested the Rule should not prescribe any particular testing methodology or schedule and should allow financial institutions to develop a testing approach appropriate for the financial institution.[240] The NPA commented penetration and vulnerability testing would be too expensive for small pawnbrokers with small staffs and a small customer base, where their members would be ''likely to notice a penetration of our records.'' [241] One commenter stated the requirements for monitoring and testing were ''overlapping and confusing'' and suggested the Commission avoid confusion by including continuous monitoring, penetration testing, vulnerability scanning, periodic risk assessment reviews, and logging as optional components of an information security program to be included on an as-needed basis.[242] Some commenters recommended the testing requirement be limited to electronic data and exclude monitoring of physical data.[243] The American Financial Services Association argued the testing of physical safeguards required by paragraph (d)(1) ''would be impossible.'' [244] Finally, CTIA argued, for entities that choose the approach of penetration and vulnerability testing, these tests should be required less regularly.[245]

On the other hand, the Princeton Center suggested, rather than requiring either continuous monitoring or penetration testing, the Rule should require both. It noted continuous monitoring is very effective at detecting problems with, and threats to, ''off-the-shelf systems'' but penetration testing is better at ''for checking the interaction between systems, proprietary systems, or subtle security issues.'' [246] Similarly, the MSRT was concerned that the Proposed Rule suggested annual penetration testing alone could protect financial institutions, rather than serve as a supplement to proper monitoring.[247]

The Commission agrees with commenters who pointed out the difficulty of applying certain testing requirements to physical safeguards. Although the general testing requirement set forth in paragraph (d)(1) should apply to physical safeguards (*e.g.,* testing effectiveness of physical locks), the continuous monitoring, vulnerability assessment, and penetration testing in paragraph (d)(2) is not relevant to information in physical form. Accordingly, the final version of paragraph (d)(2) is limited to safeguards on information systems.

The Commission also agrees biannual vulnerability testing may not be sufficient to detect new threats. Thus, given the relative ease with which vulnerability assessments can be performed, it modifies the Final Rule to require financial institutions to perform assessments when there is an elevated risk of new vulnerabilities having been introduced into their information systems, in addition to the required biannual assessments.

Beyond these modifications, the Commission believes the proposal struck the right balance between flexibility and protection of customer information, and adopts the proposed provision as final. For commenters concerned about costs of testing and continuous monitoring, the Commission notes the Rule requires one, not both. Although many financial institutions may choose to use both, the Commission agrees the costs of requiring both for all financial institutions may not be justified. [248] As to arguments that the testing required by the Rule is too frequent and will therefore be too costly, the Commission does not agree vulnerability assessments will be costly. Indeed, there are resources for free and automated vulnerability assessments.[249] And although the Commission acknowledges penetration testing can be a somewhat lengthy and costly process for large or complex systems,[250] a longer period between penetration tests will leave information systems vulnerable to attacks that exploit weaknesses normally revealed by penetration testing.

Two other portions of the Final Rule should help financial institutions concerned about the costs of monitoring and testing. First, because the Commission is limiting the definition of ''information system'' in the Final Rule, financial institutions will be able to limit this provision's application by segmenting their network and conducting monitoring or testing only of systems that contain customer information or that are connected to such systems. Second, this requirement does not apply to those institutions that

[236] Financial institutions that choose the option of continuous monitoring would also be satisfying § 314.4(c)(8).

[237] Proposed 16 CFR 314.4(d)(1) and (2).

[238] American Council on Education (comment 24, NPRM), at 13–14.

[239] American Council on Education (comment 24, NPRM), at 13.

[240] American Council on Education (comment 24, NPRM), at 14.

[241] National Pawnbrokers Association (comment 3, Workshop), at 2.

[242] Global Privacy Alliance (comment 38, NPRM), at 10–11.

[243] National Independent Automobile Dealers Association (comment 48, NPRM), at 6; American Financial Services Association (comment 41, NPRM), at 6.

[244] American Financial Services Association (comment 41, NPRM), at 6.

[245] CTIA (comment 34, NPRM) at 12–13 (arguing penetration testing should be required only once every two years and vulnerability testing be required only once a year).

[246] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 5.

[247] Money Services Round Table (comment 53, NPRM), at 9; *see also* Gusto and others (Comment 11, Workshop), at 2 (arguing penetration testing and vulnerability assessments both have their weaknesses and financial institutions should develop a testing program that it is appropriate for them).

[248] The Commission believes a system for continuous monitoring will include some form of vulnerability assessment as part of monitoring the information system.

[249] Remarks of Frederick Lee, Safeguards Workshop Tr., *supra* note 17, at 139–40.

[250] *See id.* at 129–30 (noting the cost of a penetration test can increase significantly depending on the complexity of the system to be tested and the scope of the test).

maintain records on fewer than 5,000 individuals. Accordingly, for example, it should not apply to businesses small enough for staff to personally know a majority of customers.

Finally, the Commission does not believe the testing requirements are duplicative of other provisions of the Final Rule. The provision relating to additional risk assessments, § 314.4(b)(2), requires a financial institution to reevaluate its risks and to determine if safeguards should be modified or added—it does not require testing to detect threats and technical vulnerabilities in the existing system. Section 313.4(c)(8)'s requirement that financial institutions monitor users' activity in an information system is focused on one aspect of information security—detecting and preventing unauthorized access and use of the system. The requirement of this paragraph, on the other hand, is focused on testing the overall effectiveness of a financial institution's safeguards. It is broader than paragraph (c)(8)'s requirement and is necessary to ensure financial institutions test the strength of their safeguards as a whole.

Accordingly, the Final Rule requires financial institutions to perform vulnerability assessments at least once every six months and, additionally, whenever there are material changes to their operations or business arrangements and whenever there are circumstances they know or have reason to know may have a material impact on their information security program.

Proposed Paragraph (e)

Proposed paragraph (e) set forth a requirement that financial institutions implement policies and procedures ''to ensure that personnel are able to enact [the financial institution's] information security program.'' This requirement included four components: (1) General employee training; (2) use of qualified information security personnel; (3) specific training for information security personnel; and (4) verification that security personnel are taking steps to maintain current knowledge on security issues.

General Employee Training

Proposed paragraph (e)(1) required financial institutions to provide their personnel with ''security awareness training that is updated to reflect risks identified by the risk assessment.'' [251]

While one commenter specifically supported the inclusion of this training requirement,[252] the U.S. Chamber of Commerce argued the Rule should not have any specific training requirements at all.[253] NADA stated the requirement that the training be ''updated to reflect risks identified by the risk assessment'' will require companies to develop individualized training programs to suit their financial institution and that such a process would be expensive and unnecessary because ''general security awareness'' is generally enough for most financial institutions.[254]

Given the current Rule includes a similar training requirement and training remains a vital part of effective information security, the Commission declines to eliminate it. The Commission believes the Final Rule's training requirement retains the same flexibility as the existing Rule and allows financial institutions to adopt a training program appropriate to their organization.

The Commission disagrees with NADA's concern the requirement to update training programs would be too expensive. Without a requirement that the training program be updated based on an assessment of risks, employees may be subject to the same training year after year, which might reflect obsolete threats, as opposed to addressing current ones. The Commission interprets this provision to require only that the training program be updated as necessary based on changes in the financial institution's risk assessment. The provision also gives financial institutions the flexibility to use programs provided by a third party, if that program is appropriate for the financial institution. In order to clarify updates are required only when needed by changes in the financial institution or new security threats, though, the Final Rule states training programs need to be updated only ''as necessary.''

Information Security Personnel

Proposed paragraph (e)(2) required financial institutions to ''[u]tiliz[e] qualified information security personnel,'' employed either by them or by affiliates or service providers, ''sufficient to manage [their] information security risks and to perform or oversee the information security program.'' [255] This proposed provision was designed to ensure information security personnel used by financial institutions are qualified for their positions and information security programs are sufficiently staffed.

Some commenters argued this provision was too vague because it does not define what personnel are necessary and what ''qualified'' means.[256] NADA argued hiring additional staff to meet this requirement could be prohibitively expensive.[257]

As discussed in relation to the appointment of a ''Qualified Individual,'' the Commission believes a more specific definition of ''qualified'' would not be appropriate because each financial institution has different needs and different levels of training, experience, and expertise will be appropriate for the information security staff of each institution. The term ''qualified'' conveys only that staff must have the abilities and expertise to perform the duties required by the information security program.[258] The Commission declines to include a more prescriptive set of qualification requirements in the Final Rule.[259]

As to the concern about expense, the Commission acknowledges hiring employees or retaining third parties to maintain financial institutions' information security programs can be a substantial expense. But the expense is necessary to effectuate Congressional intent that financial institutions implement reasonable safeguards to protect customer information. The Rule requires only that a financial institution have personnel ''sufficient'' to manage its risk and to maintain its information security program. A financial institution is required only to have the staff necessary to maintain its information security. An information security program that is not properly maintained cannot offer the protection it is designed to provide. A financial institution that

[251] Proposed 16 CFR 314.4(e)(1).

[252] Electronic Privacy Information Center (comment 55, NPRM), at 8.

[253] U.S. Chamber of Commerce (comment 33, NPRM), at 12; *see also* American Financial Services Association (comment 41, NPRM), at 6 (stating the Commission should acknowledge that a training program for a small financial institution will be different than a program for a larger program).

[254] National Automobile Dealers Association (comment 46, NPRM), at 34.

[255] Proposed 16 CFR 314.4(e)(2).

[256] National Automobile Dealers Association (comment 46, NPRM), at 35; National Independent Automobile Dealers Association (comment 48, NPRM), at 7.

[257] National Automobile Dealers Association (comment 46, NPRM), at 35.

[258] NADA also asks whether this provision would require financial institutions to hire more personnel if they do not have enough qualified staff. *Id.* The Final Rule does require the hiring of additional personnel if existing personnel are not enough to maintain the financial institution's information security program.

[259] One commenter, on the other hand, approved of the decision not to define ''qualified'' in the Proposed Rule, but argued the requirement in its totality was unclear because it did not set forth ''how the Commission would hold covered entities accountable.'' American Council on Education (comment 24, NPRM) at 14. The Commission believes the term ''qualified'' provides a clear enough requirement to allow a financial institution's compliance to be evaluated.

does not comply with this requirement, by definition, has insufficient staffing, and thus, cannot reasonably protect customer information.

Although the expense is necessary, the level of expense is mitigated by several factors. First, existing financial institutions should already have information security personnel (either in the form of employees or third-party service providers) qualified to perform the duties necessary to maintain reasonable security in order to comply with the requirements of the current Rule. Depending on the skills of those employees, additional staffing may not be necessary to meet the demands of the Final Rule. Second, the required staffing will vary greatly based on the size and complexity of the information system. A financial institution with an extremely simple system may not require even a single full time employee. Finally, the Rule allows the use of service providers to meet this requirement. This can significantly reduce costs as services exist to share the expense of qualified personnel and offer information security support at significantly less than the cost of employing a single qualified employee.[260] The Commission continues to believe utilizing qualified and sufficient information security personnel is a vital part of any information security program and accordingly, adopts proposed paragraph (e)(2) in the Final Rule without modification.

Training of Security Personnel

The Proposed Rule also required financial institutions to ''[p]rovid[e] information security personnel with security updates and training sufficient to address relevant security risks.'' [261] This is separate from paragraph (e)(1)'s requirement to train all personnel generally.

Some commenters argued providing ongoing training could be too costly for some financial institutions.[262] The Commission disagrees. Maintaining awareness of emerging threats and vulnerabilities is a critical aspect of information security. In order to perform their duties, security personnel must be educated on the changing nature of threats to the information systems they maintain. There are resources that will allow smaller institutions to meet this requirement at little or no cost, such as published security updates, online courses, and educational publications.[263] For financial institutions that utilize service providers to meet information security needs, the service provider is likely to include assurances that provided personnel will be trained in current security practices. The Commission views the use of such a service provider as meeting this requirement, as the financial institution is ''providing'' the service as part of the price it pays to the service provider. Thus, the Final Rule adopts paragraph (e)(3) as proposed.[264]

Verification of Current Knowledge

Proposed paragraph (e)(4) required financial institutions to ''[v]erify[ ] that key information security personnel take steps to maintain current knowledge of changing information security threats and countermeasures.'' [265] This requirement was intended to complement the proposed requirement regarding ongoing training of data security personnel, by requiring verification such training has taken place.

NADA argued this requirement should not apply to smaller financial institutions, stating the examples set forth in the Proposed Rule would be difficult for some smaller financial institutions to perform.[266] The examples provided with the Proposed Rule were that a financial institution could: (1) Offer incentives or funds for key personnel to undertake continuing education that addresses recent developments, (2) include a requirement to stay abreast of security research as part of their performance metrics, or (3) conduct an annual assessment of key personnel's knowledge of threats related to their information system. The Commission believes smaller financial institutions can take advantage of any of these methods, particularly ''requiring key personnel to undertake continuing education'' as part of that personnel's duties. If they outsource responsibility for data security to service providers, they can simply include these requirements in their contracts.

The Commission believes the rapidly changing nature of information security mandates this requirement, in order that information security leadership can properly supervise the information security program. Accordingly, the Final Rule adopts proposed paragraph (e)(4) without change.

Proposed Paragraph (f)

Proposed paragraphs (f)(1) and (2) retained the current Rule's requirement, found in existing paragraphs (d)(1) and (2), to oversee service providers, and added a paragraph (f)(3), requiring financial institutions also periodically assess service providers ''based on the risk they present and the continued adequacy of their safeguards.'' [267] The current Rule expressly requires an assessment of service providers' safeguards only at the onboarding stage; proposed paragraph (f)(3) required financial institutions to monitor their service providers on an ongoing basis to ensure they are maintaining adequate safeguards to protect customer information they possess or access.[268]

Several commenters argued it would be costly and difficult for some financial institutions to periodically assess their service providers.[269] These commenters were particularly concerned with smaller financial institutions' ability to ''monitor'' larger service providers.[270] The Internet Association commented the requirement to periodically assess service providers would be too onerous for the service providers themselves, arguing the requirement would place ''service providers under constant surveillance by their financial institution clients.'' [271] HITRUST suggested the Rule should state the periodic assessment requirement may be satisfied by requiring service providers to obtain and maintain information

[260] *See, e.g.,* Slides Accompanying Remarks of Rocio Baeza, ''Models for Complying to the Safeguards Rule Changes,'' in Safeguards Workshop Slides, *supra* note 72, at 27–28 (describing three different compliance models: In-house, outsource, and hybrid, with costs ranging from $199 per month to more than $15,000 per month); *see also* remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 81–83; slides Accompanying Remarks of Brian McManamon, ''Sample Pricing,'' in Safeguards Workshop Slides, *supra* note 72, at 29 (estimating the cost of cybersecurity services based on number of endpoints); Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 83–85.

[261] Proposed 16 CFR 314.4(e)(3).

[262] National Automobile Dealers Association (comment 46, NPRM), at 35.

[263] *See, e.g.,* Federal Trade Commission, *Cybersecurity for Small Business, https://www.ftc.gov/tips-advice/business-center/small-businesses/cybersecurity* (last accessed 1 Dec. 2020); Remarks of Kiersten Todt, Safeguards Workshop Tr. at 86–88 (describing the resources of the Cyber Readiness Institute).

[264] The Clearing House suggested the Rule should require background checks on employees. The Clearing House (Comment 49, NPRM) at 19.

[265] Proposed 16 CFR 314.4(e)(4).

[266] National Automobile Dealers Association (comment 46, NPRM), at 35–36.

[267] Proposed 16 CFR 314.4(g).

[268] The Clearing House wrote in support of this element of the Proposed Rule, noting it would bring the Safeguards Rule's provisions relating to service provider oversight into better alignment with security guidelines for banks. The Clearing House (comment 49, NPRM), at 14.

[269] National Automobile Dealers Association (comment 46, NPRM), at 37; National Independent Automobile Dealers Association (comment 48, NPRM), at 7; *see also* Wangyang Shen (comment 3, Privacy Rule) (noting difficulty of supervising cloud services).

[270] National Automobile Dealers Association (comment 46, NPRM), at 22; National Association of Dealer Counsel (comment 44, NPRM), at 3.

[271] Internet Association (comment 9, Workshop), at 3–4.

security certifications provided by third parties and based on proper information security frameworks.[272] In contrast, Consumer Reports took issue with the Rule requiring only ''assessment'' of service providers, and argued financial institutions should be required to monitor their service providers for compliance.[273] Yet other commenters expressed confusion over the term ''service provider,'' asking whether it would cover national consumer reporting agencies that smaller financial institutions would be hard-pressed to assess.[274]

The Commission retains the service provider oversight requirement from proposed paragraph (f) without modification. Some high profile breaches have been caused by service providers' security failures,[275] and the Commission views the regular assessment of the security risks of service providers as an important part of maintaining the strength of a financial institution's safeguards.

The Commission disagrees with the commenters who expressed concerns this provision, and particularly the assessment requirement, would impose undue costs on financial institutions. The Rule would require financial institutions only to assess the risks service providers present and evaluate whether they continue to provide the safeguards required by contract, which need not include extensive investigation of a service provider's systems. In the case of large service providers, this oversight may consist of reviewing public reports of insecure practices, changes in the services provided, or security failures in the services provided. In other circumstances, such as where a large company hires a vendor to secure sensitive customer information, certifications, reports, or even third-party audits may be appropriate. The exact steps required depend both on the size and complexity of the financial institution and the nature of the services provided by the service provider. For this reason, the Commission declines to adopt the suggestion to allow a financial institution to accept an information security certification from the service provider to satisfy the service provider oversight requirement. The fact that a company maintains an information security certification may be a significant part of assessing the adequacy of a service provider's safeguards, but the Commission declines to prescribe a one-size-fits all approach, given the variation in size and complexity of financial institutions and their service providers.

To avoid imposing undue costs on financial institutions, the Commission declines to require ongoing monitoring, rather than periodic assessment, as recommended by Consumer Reports. The Commission believes periodic assessment strikes the right balance between protecting consumers and imposing undue costs on financial institutions. The Commission acknowledges financial institutions may have limited bargaining power in obtaining services from large service providers and limited ability to demand access to a service provider's systems. In those cases, any sort of hands-on assessment of the provider's systems may not be possible.

As to the concern the assessment requirement will impose undue burdens on the service providers themselves, the Commission does not believe this concern justifies a modification to the proposed requirement. First, the Rule does not require ''constant surveillance'' by financial institutions—they are required only to ''periodically assess'' the risks presented by service providers. Second, as discussed above, the supervision of service providers is a vitally important aspect of information security, and while there may be some burdens on the service providers associated with being supervised, these are necessary burdens. A financial institution must be sure a service provider is protecting the information of its customers, and any expenses this involves are a necessary part of fulfilling this duty.

Finally, as to concerns about potential ambiguities in the definition of service provider, the amendments preserve the definition in the current Rule. Thus, entities subject to this requirement under the Final Rule will remain the same as under the existing Rule and may include consumer reporting agencies. As discussed above, even larger service providers such as national CRAs can be subjected to some form of review by financial institutions.[276]

The Commission adopts proposed paragraph (f) in the Final Rule without modification.

Proposed Paragraph (g)

Paragraph (g) of the Proposed Rule retained the language of existing paragraph (e) in the current Rule, which requires financial institutions to evaluate and adjust their information security programs in light of the result of testing required by this section, material changes to their operations or business arrangements, or any other circumstances they know or have reason to know may have a material impact on their information security program. The Commission received no comments on this paragraph and adopts the language of the Proposed Rule.

Proposed Paragraph (h)

Proposed paragraph (h) required financial institutions to establish written incident response plans that addressed (1) the goals of the plan; (2) the internal processes for responding to a security event; (3) the definition of clear roles, responsibilities and levels of decision-making authority; (4) external and internal communications and information sharing; (5) identification of requirements for the remediation of any identified weaknesses in information systems and associated controls; (6) documentation and reporting regarding security events and related incident response activities; and (7) the evaluation and revision as necessary of the incident response plan following a security event.

Several commenters supported the proposal to require an incident response plan.[277] The Credit Union National Association observed an incident response plan ''helps ensure that an entity is prepared in case of an incident by planning how it will respond and what is required for the response.'' [278] Consumer Reports noted a rapid response to a security event can limit damage caused by the event.[279] The

[272] HITRUST (comment 18, NPRM), at 3–4.

[273] Consumer Reports (comment 52, NPRM) at 7.

[274] American Financial Services Association (comment 41, NPRM), at 7.

[275] For example, in 2013, attackers were reportedly able to use stolen credentials obtained from a third-party service provider to access a customer service database maintained by national retailer Target Corporation, resulting in the theft of information relating to 41 million customer payment card accounts. Kevin McCoy, *Target to pay $18.5M for 2013 data breach that affected 41 million consumers,* USA Today, May 23, 2017, *https://www.usatoday.com/story/money/2017/05/23/target-pay-185m-2013-data-breach-affected-consumers/102063932/.*

[276] The National Pawnbrokers Association expressed concern they cannot control vendors of local law enforcement agencies to whom they are required to provide customer information. National Pawnbrokers Association (comment 32, NPRM), at 2. However, the Rule does not require financial institutions oversee service providers employed by other entities over which they have no control.

[277] Consumer Reports (comment 52, NPRM), at 6; Princeton University Center for Information Technology Policy (comment 54, NPRM), at 7; Electronic Privacy Information Center (comment 55, NPRM), at 8; Credit Union National Association (comment 30, NPRM), at 2; Heartland Credit Union Association (comment 42, NPRM), at 2; National Association of Federally-Insured Credit Unions (comment 43, NPRM), at 1; HITRUST (comment 18, NPRM), at 2.

[278] Credit Union National Association (comment 30, NPRM), at 2.

[279] Consumer Reports (comment 52, NPRM), at 6.

Princeton Center commented ''a written incident response plan is an essential component of a good security system.'' [280] HITRUST commented incident response plans can help organizations ''to better allocate limited resources.'' [281] The South Carolina Department of Consumer Affairs suggested the provision go further by requiring the incident response plan include a process for notifying senior information security personnel of the event.[282]

Other commenters opposed requiring an incident response plan or objected to particular aspects of the requirement. Some commenters suggested requiring financial institutions to have incident response plans is outside the Commission's authority under the GLB Act.[283] NADA argued the requirement for an incident response plan was overbroad in light of the broad definition of security event,[284] and the requirement was vague as to what the plan should include.[285]

Other commenters argued the requirement was too burdensome. ACE argued ''the range of security events that might occur and their potential impacts on institutional capacity to recover'' make establishing an incident response plan that will allow an institution to ''respond to, and recover from, *any* security event materially affecting . . . customer information'' impossible.[286] The Mortgage Bankers Association (''MBA'') suggested ''institutions of smaller sizes may not necessarily be capable of addressing all seven of the proposed goals.'' [287] Further, the MBA argued an incident response plan requirement had ''the potential to cripple small businesses under the pressure of repeatedly checking the boxes for potentially harmless events.'' [288]

Finally, some commenters raised questions about what it means for customer information to be in a financial institution's ''possession'' for purposes of the incident response plan requirement. ACE argued the requirement does not adequately account for customer information held in cloud storage operated by third parties, asserting such information is not technically within the financial institution's possession.[289] ACE suggested the provision should apply to customer information for which the financial institution is responsible, instead.[290] Relatedly, the NPA expressed concern pawnbrokers might be subject to liability under the Proposed Rule when law enforcement agencies or their third-party vendors make public disclosures of customer information pawnbrokers are obligated to report.[291]

The Commission retains the requirement for financial institution to develop and implement an incident response plan, with one modification described below. The Commission believes the creation of an incident response plan is directly related to safeguarding customer information and is within its authority under the GLBA. The requirement to create an incident response plan focuses on preparing financial institutions to respond promptly and appropriately to security events, and mitigating any weaknesses in their information systems in the process. By responding quickly and promptly mitigating weaknesses, financial institutions can stop ongoing or future compromise of customer information.[292] A well-organized response to a security event can limit the number of consumers affected by an outside attacker by promptly identifying the attack and taking steps to stop the attack.

The Commission disagrees with the commenters who stated this requirement was too burdensome. The Final Rule requires incident response plans address ''security event[s] materially affecting the confidentiality, integrity, or availability of customer information in [a financial institution's] control.'' Significantly, the plan must address events that ''materially'' affect customer information. Thus, the required incident response plan does not require a plan to address every security event that may occur. The plan need not include minute details or all possible scenarios. Instead, the Rule requires the plan to establish a system—for example, by laying out clear lines of responsibility, systems for information sharing, and methods for evaluating possible solutions—that will facilitate a financial institution's response to security events regardless of the nature of the event. A detailed approach may be appropriate for some financial institutions, such as those with especially complicated systems or personnel hierarchies, but the Rule is designed to give financial institutions the flexibility needed to develop plans that best suit their needs.[293]

Moreover, the Commission believes the requirement is clear as to what an incident response plan should include. The seven listed requirements for the incident response plans provide sufficient guidance to financial institutions designing incident response plans while giving them flexibility to design a plan suited to their organization. In addition, there are many resources for designing incident response plans available for financial institutions, as well as service providers that can assist with the design process.[294] Individual institutions can determine the exact details of the plans.

To address questions about whether information is in the financial institution's ''possession,'' the Commission is revising paragraph (h) of the Final Rule to require financial institutions develop incident response plans ''designed to promptly respond to, and recover from, any security event materially affecting . . . customer information in your *control*.'' (emphasis added) Replacing the term ''possession'' with ''control'' resolves the questions raised by ACE and the NPA regarding

[280] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 7.

[281] HITRUST (comment 18, NPRM), at 2.

[282] South Carolina Department of Consumer Affairs (comment 47, NPRM), at 2.

[283] National Automobile Dealer Association (comment 46, NPRM), at 38; National Independent Automobile Dealers Association (comment 48, NPRM), at 7.

[284] National Automobile Dealer Association (comment 46, NPRM), at 38.

[285] National Automobile Dealer Association (comment 46, NPRM), at 12, 38–39. NPA also asked for greater detail on what constitutes an ''incident.'' National Pawnbroker Association (comment 32, NPRM), at 4.

[286] American Council on Education (comment 24, NPRM), at 15.

[287] Mortgage Bankers Association (comment 26, NPRM), at 4.

[288] Mortgage Bankers Association (comment 26, NPRM), at 4.

[289] American Council on Education (comment 24, NPRM), at 15.

[290] *Id.*

[291] National Pawnbroker Association (comment 32, NPRM), at 4.

[292] *See* Remarks of Serge Jorgenson, Safeguards Workshop Tr., *supra* note 17, at 52 (observing a prompt response to an incident can prevent a ''threat actor running around in my environment for days, months, years, and able to access anything they want.'').

[293] Although the Commission agrees with the South Carolina Department of Consumer Affairs that notification of senior personnel is valuable, the requirement that the plan address ''the definition of clear roles, responsibilities and levels of decision-making authority'' will almost always result in communication of decision-making to senior personnel authorized to make decisions about the security response. Coupled with the requirement the Qualified Individual report to the board or equivalent body on material events affecting security, the Commission does not see the need to make this change.

[294] *See, e.g.,* FTC, Data Breach Response: A Guide for Business (2019), *www.ftc.gov/tips-advice/business-center/guidance/data-breach-response-guide-business;* NIST, Guide for Cybersecurity Event Recovery (2016), *nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-184.pdf;* Orion Cassetto, *Incident Response Plan 101: How to Build One, Templates and Examples, Exabeam: Information Security Blog* (November 21, 2018), *www.exabeam.com/incident-response/incident-response-plan/* (last visited December 2, 2020).

whether financial institutions must plan for security events affecting data that has been transferred to various kinds of third parties. Where a financial institution has voluntarily opted to store its customer information in the cloud, to whatever extent the information is no longer in the ''possession'' of the financial institution, it is certainly within the institution's ''control.'' By contrast, customer information that has been obtained by a third party such as a law enforcement agency, over whom a financial institution has no authority and of whose actions the financial institution has no knowledge, cannot fairly be said to be in the financial institution's control. Consequently, the financial institution need not account for possible disclosures of that information by the third party.[295]

Notification of Security Events to the Commission

The Commission also requested comment on whether the Rule should require financial institutions to report security events to the Commission. Several commenters supported this requirement.[296] The Princeton University Center for Information Technology Policy noted such a reporting requirement would ''provide the Commission with valuable information about the scope of the problem and the effectiveness of security measures across different entities'' and ''help the Commission coordinate responses to shared threats.'' [297] The National Association of Federally-Insured Credit Unions argued requiring financial institutions to report security events to the Commission would provide an ''appropriate incentive for covered financial companies to disclose information to consumers and relevant regulatory bodies.'' [298] NAFCU also suggested notification requirements are important because they ''ensure independent assessment of whether a security incident represents a threat to consumer privacy.'' [299]

Other commenters opposed the inclusion of a reporting requirement.[300] ACE argued such a requirement ''would simply add another layer on top of an already crowded list of federal and state law enforcement contacts and state breach reporting requirements.'' [301] ACE also suggested any notification requirement should be limited to a more restricted definition of ''security event'' than the definition in the Proposed Rule, so financial institutions would only be required to report incidents that could lead to consumer harm.[302]

The Commission agrees with commenters that stated a requirement financial institutions report security events to the Commission would have many benefits, including allowing the Commission to identify emerging threats and assisting the Commission's enforcement of the Rule. In addition, such a requirement would be unlikely to create a significant burden on financial institutions because a security event that leads to notification to the Commission is very likely to create breach notification obligations under various state laws, and the financial institution will thus already be engaged in notifying consumers and state regulators. The addition of a notification to the FTC would not require any significant additional preparation or effort. However, because the notice of proposed rulemaking did not set forth a detailed proposal for a notification requirement, the Final Rule does not include such a requirement. Instead, the Commission is issuing a supplemental notice of proposed rulemaking (SNPRM) that proposes adding a requirement financial institutions notify the Commission of detected security events under certain circumstances.[303]

Proposed Paragraph (i)

Proposed paragraph (i) required a financial institution's CISO to ''report in writing, at least annually, to [the financial institution's] board of directors or equivalent governing body'' regarding the following information: (1) The overall status of the information security program and financial institution's compliance with the Safeguards Rule; and (2) material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, service provider arrangements, results of testing, security events or violations and management's responses thereto, and recommendations for changes in the information security program.[304] For financial institutions that did not have a board of directors or equivalent, the proposal required the CISO to make the report to a senior officer responsible for the financial institution's information security program.

One commenter supported this requirement.[305] Additionally, several workshop participants emphasized the value of communication between information security leaders and corporate boards or their equivalent. For example, workshop participant Michele Norin stated it is ''important'' for the topic of information security to be discussed at the level of the board or senior leadership regularly, and at least once per year.[306] Participant Adrienne Allen agreed annual reporting made sense as a requirement, but noted for some financial institutions, particularly those with an online presence, even more frequent communication could be beneficial.[307]

ACE argued the Proposed Rule created too much emphasis on a single annual report and should instead focus on regular reporting to the Board or equivalent.[308] It also expressed concern the report required by the Proposed Rule would be too detailed and would not allow the Board to see ''the forest for the trees,'' [309] the requirements for the report were too prescriptive, and the requirements focused too much on compliance rather than security.[310] Similarly, NADA argued the report would not improve security but would instead create ''unnecessary liability exposure for the board/leadership of the entity.'' [311] HITRUST suggested

[295] NADA further argued the incident response plan constitutes a de facto consumer notification requirement. National Automobile Dealer Association (comment 46, NPRM), at 39. Financial institutions have an independent obligation to perform notification as required by state law, whether or not they have an incident response plan in place. The fact that the Rule requires a plan that sets forth procedures for satisfying that requirement does not impose any independent notification requirement on the financial institution.

[296] Consumer Reports (comment 52, NPRM), at 6; Princeton University Center for Information Technology Policy (comment 54, NPRM), at 7; Credit Union National Association (comment 30, NPRM), at 2; Heartland Credit Union Association (comment 42, NPRM), at 2; National Association of Federally-Insured Credit Unions (comment 43, NPRM), at 1–2.

[297] Princeton University Center for Information Technology Policy (comment 54, NPRM), at 7.

[298] National Association of Federally-Insured Credit Unions (comment 43, NPRM), at 1.

[299] National Association of Federally-Insured Credit Unions (comment 43, NPRM), at 1–2.

[300] National Independent Automobile Dealers Association (comment 48, NPRM), at 7; American Council on Education (comment 24, NPRM), at 15.

[301] American Council on Education (comment 24, NPRM), at 15.

[302] *Id.*

[303] Standards for Safeguarding Customer Information, SNPRM, published elsewhere in this issue of the **Federal Register**.

[304] Proposed 16 CFR 314.4(i).

[305] Rocio Baeza (comment 12, Workshop), at 3–8 (supporting requirement and providing sample report form and compliance questionnaire); *see also* The Clearing House (comment 49, NPRM), at 15–16 (arguing that Rule should require more involvement from Board and senior management).

[306] Remarks of Michele Norin, Safeguards Workshop Tr., *supra* note 17, at 194.

[307] Remarks of Adrienne Allen, Safeguards Workshop Tr., *supra* note 17, at 199–200.

[308] American Council on Education (comment 24, NPRM), at 16.

[309] *Id.*

[310] *Id.*

[311] National Automobile Dealer Association (comment 46, NPRM), at 41. NADA also argued the

Qualified Individuals should be able to meet this reporting requirement by submitting a report from an information security certification program to the Board or equivalent body.[312]

The Commission adopts the proposal as final, with one modification discussed below. This provision is intended to ensure the governing body of the financial institution is engaged with and informed about the state of the financial institution's information security program. Likewise, this will create accountability for the Qualified Individual by requiring him or her to set forth the status of the information security program for the governing body.[313] This will help financial institutions to ensure their information security programs are being maintained appropriately and given the necessary resources. Written reports will create a record of decisions made and the information upon which they were based, which may aid future decision-making.[314] Management involvement in information security programs can improve the strength of those programs and help to reduce breaches.[315]

The Commission disagrees with the commenters who stated the reporting requirement would be too prescriptive. In fact, the language only requires reporting of (1) the overall status of the information security program and its compliance with this Rule; and (2) material matters related to the information security program. The language includes examples of what material matters might include, such as risk assessments and security events, but does not require all of them be included. The financial institution and the Qualified Individual will be responsible for determining what is material for their organization. The Commission does not believe these requirements call for overly detailed reports.[316]

Although the Commission agrees a certification report from a Qualified Individual could be a part of the annual report and may cover many material matters, it may not suffice in all cases; thus, the Commission declines to include such a one-size-fits-all requirement.

As to the suggestion to require ''regular'' reporting, the Commission agrees more regular reporting may be the best approach for many financial institutions. To this end, the Commission modifies the requirement in the final rule to say ''regularly, and at least annually.'' [317] Beyond this modification, the Final Rule adopts proposed paragraph (i) as proposed.

Board Certification

The Commission specifically sought comment on whether the Board or equivalent should be required to certify the contents of the report. The two commenters who addressed this question stated they should not.[318] ACE noted ''governing boards generally will not have the knowledge and expertise to independently certify'' the technical aspects of the report and certification might require the employment of outside auditors.[319] The Commission agrees senior management of financial institutions will often lack the technical expertise to personally attest to its validity. In addition, the primary purpose of the required report is to encourage communication between information security personnel and senior management, not to show compliance with the Rule. Requiring the governing board to certify the contents of the report would likely transform the report into a compliance document and might reduce its efficacy as a communication between the Qualified Individual and the Board. Accordingly, the Commission declines to adopt this requirement in the Final Rule.

§ 314.5: Effective Date

The Proposed Rule set a new effective date for some portions of the Rule. Proposed § 314.5 provided certain elements of the information security program would not be required until six months after the publication of a final rule, rather than immediately upon publication. The paragraphs that would have a delayed effective date were: § 314.4(a), related to the appointment of a Qualified Individual; § 314.4(b)(1), relating to conducting a written risk assessment; § 314.4(c)(1) through (8), setting forth the new elements of the information security program; § 314.4(d)(2), requiring continuous monitoring or annual penetration testing and biannual vulnerability assessment; § 314.4(e), requiring training for personnel; § 314.4(f)(3), requiring periodic assessment of service providers; § 314.4(h), requiring a written incident response plan; and § 314.4(i), requiring annual written reports from the Qualified Individual. All other requirements under the Safeguards Rule would remain in effect during this six-month period. These remaining requirements largely mirrored the requirements of the existing Rule.

All commenters that addressed this provision noted the difficulty of complying with some of the provisions of the Proposed Rule, and argued financial institutions should be given more time to comply with them. ACE suggested financial institutions be given one year to create a plan for compliance and two years to come into actual compliance.[320] AFSA suggested compliance not be required for two

reports by third-party Qualified Individuals might not include useful information and were ''more likely to be filled with platitudes and/or efforts to 'upsell' the dealership on additional CISO services.'' *Id.* at 42. NADA provided no support for this claim. The Commission notes such a report would not meet the requirements of this provision, and the financial institution would be justified in terminating their relationship with that provider or, at least, demanding a revised report that did meet those requirements.

[312] HITRUST (comment 18, NPRM), at 4.

[313] *See* Remarks of Karthik Rangarajan, Safeguards Workshop Tr., *supra* note 17, at (''If quarter over quarter, year over year, this watermark isn't reducing, then board of directors should be able to challenge us and say maybe you're not mapping your risks correctly, or vice versa if it's reducing but we're seeing more incidents, we're seeing potential breaches, things like that, then the board of directors should be able to say maybe you don't have the right risk quantification framework or the right risk management framework.'').

[314] Workshop participants Adrienne Allen, Karthik Rangarajan, and Michele Norin each emphasized this point. *See* Safeguards Workshop Tr., *supra* note 17, pp. 201–09.

[315] *See* Juhee Kwon Jackie Rees Ulmer, & Tawei Wang, *The Association Between Top Management Involvement and Compensation and Information Security Breaches,* Journal of Information Systems, Spring 2013, at 219–236 (''. . . the involvement of an IT executive decreases the probability of information security breach reports by about 35 percent . . .''); Julia L. Higgs, Robert E. Pinsker, Thomas Joseph Smith, & George Young, *The Relationship Between Board-Level Technology Committees and Reported Security Breaches, Journal of Information Systems,* Fall 2016, at 79–98 (''[A]s a technology committee becomes more established, its firm is not as likely to be breached. To obtain further evidence on the perceived value of a technology committee, this study uses a returns analysis and finds that the presence of a technology committee mitigates the negative abnormal stock returns arising from external breaches.'').

[316] Indeed, workshop participants discussed a variety of strategies for meaningful communication between security personnel and senior leadership. Participants noted the proper content, style, and cadence of reporting (beyond the minimum annual report) will vary depending on, among other things, the type of financial institution in question and the level of familiarity of leadership with the relevant technical issues. *See* Safeguards Workshop Tr., *supra* note 17, at 194–200.

[317] NADA argued reports required by this provision would be expensive because the Proposed Rule stated they would need to be prepared by a ''CISO,'' which NADA takes to mean a highly compensated expert of the type retained by the most sophisticated large institutions. National Automobile Dealer Association (comment 46, NPRM), at 41. As discussed above, however, the Rule does not require all financial institutions to retain such an expert. Instead, the report will be made by the Qualified Individual, whose expertise and compensation will vary according to the size and complexity of a financial institution's information system.

[318] National Automobile Dealer Association (comment 46, NPRM), at 41 n.126; American Council on Education (comment 24, NPRM), at 16.

[319] American Council on Education (comment 24, NPRM), at 16.

[320] American Council on Education (comment 24, NPRM), at 4–5.

years.[321] ACA International requested the effective date be one year after publication of the Rule.[322]

The Commission agrees some financial institutions may need longer to modify their information security programs to comply with the new requirements in the Final Rule, especially given the current pandemic and the strains it is placing on businesses. Accordingly, the Final Rule extends the effective date for these enumerated provisions to one year after the publication of this document.

Proposed § 314.6: Exceptions

Proposed § 314.6 exempted financial institutions that maintain customer information concerning fewer than five thousand consumers from certain requirements of the Proposed Rule, namely § 314.4(b)(1), requiring a written risk assessment; § 314.4(d)(2), requiring continuous monitoring or annual penetration testing and biannual vulnerability assessment; § 314.4(h), requiring a written incident response plan; and § 314.4(i), requiring an annual written report by the CISO (as revised, the Qualified Individual).[323] This proposed section was designed to reduce the burden on smaller financial institutions.

The Commission sought comment on whether it was appropriate to include such an exemption, whether the specific exemptions were appropriate, whether the use of the number of customers concerning whom the financial institution retains customer information is the most effective way to determine which financial institutions should be exempted and, if so, whether five thousand customers was an appropriate number. After reviewing the comments received, the Commission retains the exemption for financial institutions with fewer than 5,000 customers as proposed.

Several commenters supported the inclusion of an exemption for small financial institutions. Consumer Reports supported the exemption as proposed.[324] NPA supported the decision to base this exemption on the number of customers whose information the financial institution maintains, but questioned how the number of customers would be determined.[325] NPA asked whether the number of customers would be counted on an annual basis or include all records the financial institution maintains. It also asked if each transaction with a customer would be counted separately.[326]

Some commenters argued the number of customers whose records a financial institution maintains was the wrong measure by which to assess whether the exemption should apply. For example, commenters suggested the Rule should take into account businesses with revenue beneath a certain threshold,[327] the number of students enrolled at covered educational institutions,[328] or the number of individuals employed by the financial institution.[329]

Additionally, some commenters argued the threshold for application of the exemption should be higher. ACA International suggested the exemption should apply to all financial institutions maintaining records concerning fewer than 10,000 customers.[330] AFSA suggested a 50,000 customer threshold.[331] NADA [332] and NIADA [333] argued the threshold should be raised to 100,000 customers. Without proposing a specific alternative, NPA expressed concern the 5,000-customer threshold may be too low, noting pawnbrokers who accept firearms as collateral are required to keep customer records related to certain transactions for twenty years.[334]

As to the substance of the exemption, some commenters felt it did not go far enough to relieve the burden of the rule for small financial institutions. ACA International proposed eligible financial institutions should also be exempt from the requirement to designate a single qualified individual to oversee their information security programs.[335] The National Federation of Independent Business argued businesses with 15 or fewer employees should be exempted from the Rule entirely and instead held only to a requirement to take ''commercially reasonable steps'' to safeguard customer information.[336] The Small Business Administration Office of Advocacy suggested, in the absence of additional information regarding the impact of the proposed changes on small businesses, the Rule should ''maintain the status quo'' for small entities as defined by the Small Business Administration's size standards.[337]

On the other hand, other commenters opposed the inclusion of any exemption. The Independent Community Bankers of America noted the Federal Financial Institutions Examination Council Interagency Guidelines Establishing Standards for Safeguarding Customer Information (''FFIEC Guidelines''), which detail how depository institutions are required to protect customer information, include no exemption for smaller institutions and suggested the Rule should also have no exemption and apply equally to all financial institutions.[338]

Under the existing Rule, there is no exception for smaller entities. Still, the Commission continues to believe it is appropriate to exempt small businesses from some of the revised Rule's requirements. Although the FFIEC Guidelines do not exempt small businesses from its requirements, the FFIEC Guidelines regulate only depository financial institutions subject to an entirely different regulatory regime, including supervision by their regulatory agencies. While the provisions from which eligible financial institutions are exempt have significant benefits for the security of customer information and other sensitive data,[339]

[321] American Financial Services Association (comment 41, NPRM), at 7.

[322] ACA International (comment 45, NPRM), at 10–11.

[323] Proposed 16 CFR 314.6.

[324] Consumer Reports (comment 52, NPRM), at 6; *see also* Credit Union National Association (comment 30, NPRM), at 2 (noting the exemption will be helpful for smaller businesses, but suggesting other changes to the Proposed Rule so the exemption is not required).

[325] National Pawnbrokers Association (comment 32, NPRM), at 6.

[326] *Id.; see also* National Independent Automobile Dealers Association (comment 48, NPRM), at 3.

[327] ACA International (comment 45, NPRM), at 11–12.

[328] American Council on Education (comment 24, NPRM), at 5.

[329] Ahmed Aly (comment 22, NPRM).

[330] ACA International (comment 45, NPRM), at 11–12.

[331] American Financial Services Association (comment 41, NPRM), at 3–4.

[332] National Automobile Dealers Association (comment 46, NPRM), at 43–44. NADA also suggested information about customers for which the nonpublic information has been removed should not be counted to the total. If the information is anonymized or otherwise transformed so it is no longer reasonably linkable to a customer, that information will not count towards the exemption. NADA's example of retaining only ''name, phone number, address, and VIN of the vehicle they own,'' would still count as customer information under the Rule.

[333] National Independent Automobile Dealers Association (comment 48, NPRM), at 3.

[334] National Pawnbrokers Association (comment 32, NPRM), at 6.

[335] ACA International (comment 45, NPRM), at 12.

[336] National Federation of Independent Business (comment 16, NPRM), at 4.

[337] Small Business Administration Office of Advocacy (comment 28, NPRM), at 6.

[338] Independent Community Bankers of America (comment 35, NPRM), at 4; *see also* American Escrow (comment 6, Workshop), at 3 (arguing even small companies may need to comply with all portions of the Rule to maintain consumer confidence); *see also* Caiting Wang (Comment 6, Privacy) (suggesting exempted provisions should be optional for smaller businesses, or the Commission create a fund to enable small businesses to comply with these provisions).

[339] *See, e.g.,* Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 85 (noting continuous monitoring allows organizations

those provisions may be less necessary in situations where the overall volume of retained data is low. This is true in part because the potential for cumulative consumer harm is less where fewer consumers' information may be exposed as the result of a security incident.[340]

For similar reasons, the Commission finds the number of individuals concerning whom a financial institution maintains customer information is the appropriate measure of whether the exemption should apply to a particular financial institution. The application of the exemption should take into account both the potential burden of compliance to financial institutions and the risk to consumers when standards are relaxed—in other words, the purpose of the exemption is to avoid imposing *undue* burden while assuring customer information is subject to necessary protections. Even a very small financial institution, depending on its business model, may retain very large quantities of sensitive customer information.[341] Adequate security is necessary to protect such information, which may constitute an attractive target for bad actors such as identity thieves; the value of the target is correlated with the volume of information maintained.[342] While a business's revenue or number of employees may provide a measure of the burden of compliance for that business, these figures do not capture consumer risk. By contrast, the number of individuals about whom a financial institution maintains customer information is a proxy for the level of security necessary in light of both the risk of attack and the potential consumer harm should a security incident occur.[343] In addition, basing the exemption on the number of individuals concerning whom a financial institution maintains customer information provides an incentive to financial institutions to reduce the amount of information they retain. A financial institution may choose to dispose of information so it holds information on few enough consumers to qualify for exemption.[344]

The Final Rule adopts this section as proposed. The Commission continues to believe the cutoff for financial institutions maintaining information concerning 5,000 consumers appropriately balances the need for security with the burdens on smaller businesses. The requirements to which exempted financial institutions would still be required to adhere are tailored to balance the importance of adequately securing customer information against the need to limit financial burdens for small businesses. Many of these requirements were already in force as part of the existing Rule—for example, covered financial institutions were already required to design and implement a written information security program, conduct risk assessments, perform an initial assessment of their service providers, and designate one or more employees to oversee information security. For reasons discussed elsewhere in this document, the new requirements that apply to exempted financial institutions, such as the requirement to designate a single qualified individual to oversee information security rather than one or more individuals, will ensure financial institutions of all sizes continue to adequately protect customer information in an environment of increasing cybersecurity risk, while avoiding the imposition of undue burden.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 35, requires Federal agencies to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons.[345] A ''collection of information'' occurs when ten or more persons are asked to report, provide, disclose, or record information in response to ''identical questions.'' [346] Applying these standards, neither the Safeguards Rule nor the amendments constitute a ''collection of information.'' [347] The Rule calls upon affected financial institutions to develop or strengthen their information security programs in order to provide reasonable safeguards. Under the Rule, each financial institution's safeguards will vary according to its size and complexity, the nature and scope of its activities, and the sensitivity of the information involved. For example, a financial institution with numerous employees would develop and implement employee training and management procedures beyond those that would be appropriate or reasonable for a sole proprietorship, such as an individual tax preparer or mortgage broker. Similarly, a financial institution that shares customer information with numerous service providers would need to take steps to ensure such information remains protected, while a financial institution with no service providers would not need to address this issue. Thus, although each financial institution must summarize its compliance efforts in one or more written documents, the discretionary balancing of factors and circumstances the Rule allows—including the myriad operational differences among businesses it contemplated—does not require entities to answer ''identical questions'' and therefore does not trigger the PRA's requirements.

The amendments to the Rule do not change this analysis because they retain the existing Rule's process-based approach, allowing financial institutions to tailor their programs to reflect the financial institutions' size, complexity, and operations, and to the

to detect and quickly respond to threats); Remarks of Frederick Lee, Safeguards Workshop Tr., *supra* note 17, at 126–28 (Frederick Lee) (discussing benefits of penetration testing); Remarks of Tom Dugas, Safeguards Workshop Tr., *supra* note 17, at 143 (noting the importance of vulnerability scans); Remarks of Michele Norin, Safeguards Workshop Tr., *supra* note 17, 194–95 (asserting annual reporting by the Qualified Individual to an organization's board or equivalent is beneficial); Remarks of Adrienne Allen, Safeguards Workshop Tr., *supra* note 17, at 201.

[340] *See* Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 91–92 (noting companies that control large amounts of consumer data should in most instances implement the full range of data security safeguards, whereas small businesses with less data may need to focus on cybersecurity basics); *see also* Remarks of Lee Waters, Safeguards Workshop Tr., *supra* note 17, at 91 (''[T]he amount of data [that a business holds] would definitely have an influence on whether a business is even going to be attacked.''); Remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 94 (citing the volume of consumer records held by an organization as an important factor in assessing cybersecurity risk).

[341] *See, e.g.,* Remarks of James Crifasi, Safeguards Workshop Tr., *supra* note 17, at 91–92 (noting small businesses with an enormous amount of consumer records need to follow all of the safeguards and ''can't get away with just doing the basics''); *see also* ACA International (comment 45, NPRM) at 11 (''Many small financial institutions, including a number of ACA members, have objectively limited operations in terms of number of employees and revenues, but handle large volumes of consumer account data for each of their clients on whose behalf they are collecting debts.'').

[342] *See. e.g.,* Remarks of Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 94 (opining ''the better indicators for cybersecurity risk are going to be two things: The volume of consumer records that a financial institution holds and also the rate of change.''); Remarks of Lee Waters, Safeguards Workshop Tr., *supra* note 17, at 91 (noting the amount of data a company holds influences whether it is going to be attacked).

[343] *See* Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 89–90 (noting the size of a financial institution and the amount and nature of the information it holds factor into an appropriate information security program).

[344] The Commission understands this provision to count all individual consumers about which a financial institution maintains customer information, including both current and former customers. The exemption counts consumers rather than transactions so a financial institution that had 100 transactions with a single customer would count only a single consumer.

[345] 44 U.S.C. 3502(3)(A)(i).

[346] *See* 44 U.S.C. 3502(3)(A).

[347] *See* Standards for Safeguarding Customer Information, 67 FR 36484, 36491 (May 23, 2002).

sensitivity and amount of customer information they collect. For example, amended § 314.4(b) would require a written risk assessment, but each risk assessment will reflect the particular structure and operation of the financial institution and, though each assessment must include certain criteria, these are only general guidelines and do not consist of ''identical questions.'' Similarly, amended § 314.4(h), which requires a written incident response plan, is only an extension of the preexisting requirement of a written information security plan and would necessarily vary significantly based on factors such as the financial institution's internal procedures, which officials within the financial institution have decision-making authority, how the financial institution communicates internally and externally, and the structure of the financial institution's information systems. Likewise, the proposed requirement for Qualified Individuals to produce annual reports under proposed § 314.4(i) does not consist of answers to identical questions, as the content of these reports would vary considerably between financial institutions and Qualified Individuals are given flexibility in deciding what to include in the reports. Finally, the modification of the definition of ''financial institution'' to include ''activities incidental to financial activities'' and therefore bring finders under the scope of the Rule do not constitute a ''collection of information,'' and therefore do not trigger the PRA's requirements.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed Rule, or certify that the proposed Rule will not have a significant impact on a substantial number of small entities.[348] The Commission published an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the Proposed Rule on small entities. In response, the Commission received comments that argued the revision to the Safeguards Rule would be unduly burdensome for smaller financial institutions. The discussion below summarizes these comments and the Commission's response to them.

1. Description of the Reason for Agency Action

The Commission issues these amendments to clarify the Safeguards Rule by including a definition of ''financial institution'' and related examples in the Safeguards Rule rather than incorporating them from the Privacy Rule by reference. The amendments also expand the definition of ''financial institution'' in the Rule to include entities engaged in activities incidental to financial activities. This change would bring ''finders'' within the scope of the Rule. This change harmonizes the Rule with other agencies' rules and requires finders that collect consumers' sensitive financial information to comply with the Safeguards Rule's process-based approach to protect that data.

In addition, the amendments modify the Safeguards Rule to include more detailed requirements for the information security program required by the Rule.

2. Issues Raised by Comments in Response to the IRFA

As stated above, the Commission received several comments that argued the revised Safeguards Rule would impose unduly heavy burdens on smaller businesses. The Small Business Administration's Office of Advocacy commented it was concerned the FTC had not gathered sufficient data as to either the costs or benefits of the proposed changes for small financial institutions. The FTC shares the Office of Advocacy's interest in ensuring regulatory changes have an evidentiary basis. Many of the questions on which the FTC sought public comment, both in the regulatory review and in the proposed rule context, specifically related to the costs and benefits of existing and proposed Rule requirements. Following the initial round of commenting, the Commission conducted the FTC Safeguards Workshop and solicited additional public comments with the explicit goal of gathering additional data relating to the costs and benefits of the proposed changes.[349] As detailed throughout this document, the Commission believes there is a strong evidentiary basis for the issuance of the Final Rule.

The Office of Advocacy also argued the Proposed Rule's requirements were unduly prescriptive and should not be enacted as they apply to small businesses until the Commission can ''ascertain the quantitative impact on small entities.''[350] The Office of Advocacy, along with other commenters, argued the amendments taken together would create a large burden on smaller financial institutions. In particular, commenters pointed to the requirements that financial institutions appoint a chief information security officer, customer information be encrypted, financial institutions utilize multi-factor authentication, and financial institutions regularly update training programs. These comments and the Commission's response are discussed at length above. Most commenters did not provide any specific estimates of these expenses, but two commenters did provide a summary of their expected expenses.

As discussed in the document, the Commission believes any burden imposed by the revised Rule is substantially mitigated by the fact the Rule continues to be process-based, flexible, and based on the financial institution's size and complexity. In addition, the amendments exempt institutions that maintain information on fewer than 5,000 consumers from certain requirements that require additional written product and might pose a greater burden on smaller entities. The Commission believes most of the entities covered by the exemption will be small businesses. Finally, the Commission believes all financial institutions, including small businesses, that comply with the current Safeguards Rule will already be in compliance with most of the new provisions of the revised Rule as part of their current information security program.

In addition, in response to the comments concerned about the burden of the amendments, the Commission extended the effective date from six months after the publication of the Final Rule to one year after the publication to allow financial institutions additional time to come into compliance with the revised Rule. In addition, in response to comments that argued hiring a chief information security officer would be prohibitively expensive for small financial institutions, the Commission amended the rule to clarify such an employee was not required for all financial institutions. The Final Rule is modified to clarify a financial institution need only appoint an individual who is qualified to coordinate its information security program, and those qualifications will vary based on the complexity of the program and size and nature of the

[348] 5 U.S.C. 603 *et seq.*

[349] See Public Workshop Examining Information Security for Financial Institutions and Information Related to Changes to the Safeguards Rule, 85 FR 13082 (Mar. 6, 2020).

[350] Small Business Administration Office of Advocacy (comment 28, NPRM), at 6.

financial institution. The Commission also clarified employee training programs need to be updated only as necessary, to respond to a comment regular updating would be difficult for smaller financial institutions.

3. Estimate of Number of Small Entities to Which the Amendments Will Apply

As previously discussed in the IRFA, determining a precise estimate of the number of small entities [351]—including newly covered entities under the modified definition of financial institution—is not readily feasible. Financial institutions already covered by the Rule as originally promulgated include lenders, financial advisors, loan brokers and servicers, collection agencies, financial advisors, tax preparers, and real estate settlement services, to the extent they have ''customer information'' within the meaning of the Rule. Finders are also covered under the Final Rule. However, it is not known whether any finders are small entities, and if so, how many there are. The Commission requested comment and information on the number of ''finders'' that would be covered by the Rule's modified definition of ''financial institution,'' and how many of those finders, if any, are small entities. The Commission received no comments that addressed this question.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Rule does not impose any reporting or any specific recordkeeping requirements as discussed earlier. *See supra* Section IV (Paperwork Reduction Act). With regard to other compliance requirements, the addition of definitions and examples from the Privacy Rule is not expected to have an impact on covered financial institutions, including those that may be small entities. (The preceding section of this analysis discusses classes of covered financial institutions that may qualify as small entities.) The addition of ''finders'' to the definition of financial institutions imposes the obligations of the Rule on entities that engage in ''finding'' activity and also collect customer information.

The addition of more detailed requirements may require some financial institutions to perform additional risk assessments or monitoring, or to create additional safeguards as set forth in the Proposed Rule. These obligations may require institutions to retain employees or third-party service providers with skills in information security, but, as discussed above, the Commission believes most financial institutions will have already complied with many parts of the Rule as part of their information security programs required under the existing Rule. There may be additional related compliance costs (*e.g.,* legal, new equipment or systems, modifications to policies or procedures), but, as discussed above, the Commission believes these are limited by several factors, including the flexibility of the Rule, the existing safeguards in place to comply with the existing Rule, and the exemption for financial institutions that maintain less consumer information.

Although two commenters provided summaries of the expected expenses for some financial institutions to comply with the Rule, those estimates did not provide sufficient detail to fully evaluate whether they were accurate or representative of other financial institutions and appeared to be based, at least in part, on a misunderstanding of the requirement to appoint a Qualified Individual. The Commission believes, for most smaller financial institutions, there are very low-cost solutions for any additional duties imposed by the Final Rule. This view is supported by the comments of several experts at the Safeguards Rule Workshop.[352]

The Commission believes the protection of consumers' financial information is of the utmost importance and the cost of the safeguards required to provide that protection is justified and necessary. The Commission carefully balanced the cost of these requirements with the need to protect consumer information and has made every effort to ensure the Final Rule retains flexibility so financial institutions can tailor information security programs to the size and complexity of the financial institution, the nature and scope of its activities, and the sensitivity of any customer information at issue.

5. Description of Steps Taken To Minimize Significant Economic Impact, if Any, on Small Entities, Including Alternatives

The standards in the Final Rule allow a small financial institution to develop an information security program appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of any customer information at issue. The amendments include certain design standards (*e.g.,* a company must implement encryption, authentication, and incident response) in the Rule, in addition to the performance standards (reasonable security) the Rule currently uses. As discussed, while these design standards may introduce some additional burden, the Commission believes many financial institutions' existing information security programs already meet most of these requirements. In addition, the requirements in the Final Rule, like those in the existing Rule, are designed to allow financial institutions flexibility in how and whether they should be implemented. For example, the requirement encryption be used to protect customer information in transit and at rest may be met with effective alternative compensating controls if encryption is infeasible for a given financial institution.

In addition, the amendments exempt financial institutions that maintain relatively small amounts of customer information from certain requirements of the Final Rule. The exemptions would apply to financial institutions that maintain customer information

[351] The U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes (''NAICS'') are generally expressed in either millions of dollars or number of employees. A size standard is the largest a business can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the annual receipts or the average employment of a firm. Depending on the nature of the financial services an institution provides, the size standard varies. By way of example, mortgage and nonmortgage loan brokers (NAICS code 522310) are classified as small if their annual receipts are $8.0 million or less. Consumer lending institutions (NAICS code 522291) are classified as small if their annual receipts are $41.5 million or less. Commercial banking and savings institutions (NAICS codes 522110 and 522120) are classified as small if their assets are $600 million or less. Assets are determined by averaging the assets reported on businesses' four quarterly financial statements for the preceding year. The 2019 Table of Small Business Size Standards is available at *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

[352] *See, e.g.,* Remarks of Brian McManamon, Safeguards Workshop Tr., *supra* note 17, at 78 (describing virtual CISO services); Matthew Green, Safeguards Workshop Tr., *supra* note 17, at 225 (noting website usage of encryption for data in motion is above 80 percent; ''Let's Encrypt'' provides free TLS certificates; and costs have gone down to the point that if a financial institution is not using TLS encryption for data in motion, it is making an unusual decision outside the norm); Rocio Baeza, Safeguards Workshop Tr., *supra* note 17, at 106 (''[T]he encryption of data in transit has been standard. There's no pushback with that.''); Slides Accompanying the Remarks of Lee Waters, ''Information Security Programs and Smaller Businesses,'' in Safeguards Workshop Slides, *supra* note 72, at 26 (''Estimated Costs of Proposed Changes,'' estimating costs of multi-factor authentication to be $50 for smartcard or fingerprint readers, and $10 each per smartcard); Slides Accompanying Remarks of Wendy Nather, Safeguards Workshop Slides, *supra* note 72, at 37 (chart showing the use of multi-factor authentication solutions such as Duo Push, phone call, mobile passcode, SMS passcode, hardware token, Yubikey passcode, and U2F token in industries such as financial services and higher education).

concerning fewer than ten thousand consumers. The Commission believes exempted financial institutions are generally, but not exclusively, small entities. Such financial institutions are not required to perform a written risk assessment, conduct continuous monitoring or annual penetration testing and biannual vulnerability assessment, prepare a written incident response plan, or prepare an annual written report by the Qualified Individual. These exemptions are intended to reduce the burden on smaller financial institutions. The Commission believes the obligations subject to these exemptions are the ones most likely to cause undue burden on smaller financial institutions.

Exempted financial institutions will still need to conduct risk assessments, design and implement a written information security program with the required elements, utilize qualified information security personnel and train employees, monitor activity of authorized users, oversee service providers, and evaluate and adjust their information security program. These are core obligations under the Rule any financial institution that collects customer information must meet, regardless of size.

The Commission considered allowing compliance with a third-party data security standard, such as the NIST framework, to act as a safe harbor for compliance with the Rule. The Commission, however, determined any reduction of burden created by allowing such safe harbors is offset by issues they would cause. For example, such safe harbors would require the Commission to monitor the third-party standard or standards to determine whether they continued to align with the Safeguards Rule. In addition, the Commission would still have to investigate a company's compliance with the outside standard in any enforcement action. The Commission also does not agree compliance with an outside standard is likely to be less burdensome than complying with the Safeguards Rule itself.

VI. Other Matters

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Part 314

Consumer protection, Credit, Data protection, Privacy, Trade practices.

For the reasons stated above, the Federal Trade Commission amends 16 CFR part 314 as follows:

PART 314—STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

■ 1. The authority citation for part 314 continues to read as follows:

Authority: 15 U.S.C. 6801(b), 6805(b)(2).

■ 2. In § 314.1, revise paragraph (b) to read as follows:

§ 314.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies to the handling of customer information by all financial institutions over which the Federal Trade Commission (''FTC'' or ''Commission'') has jurisdiction. Namely, this part applies to those ''financial institutions'' over which the Commission has rulemaking authority pursuant to section 501(b) of the Gramm-Leach-Bliley Act. An entity is a ''financial institution'' if its business is engaging in an activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), which incorporates activities enumerated by the Federal Reserve Board in 12 CFR 225.28 and 225.86. The ''financial institutions'' subject to the Commission's enforcement authority are those that are not otherwise subject to the enforcement authority of another regulator under section 505 of the Gramm-Leach-Bliley Act, 15 U.S.C. 6805. More specifically, those entities include, but are not limited to, mortgage lenders, ''pay day'' lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, collection agencies, credit counselors and other financial advisors, tax preparation firms, non-federally insured credit unions, investment advisors that are not required to register with the Securities and Exchange Commission, and entities acting as finders. They are referred to in this part as ''You.'' This part applies to all customer information in your possession, regardless of whether such information pertains to individuals with whom you have a customer relationship, or pertains to the customers of other financial institutions that have provided such information to you.

■ 3. Revise § 314.2 to read as follows:

§ 314.2 Definitions.

(a) *Authorized user* means any employee, contractor, agent, customer, or other person that is authorized to access any of your information systems or data.

(b)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) For example:

(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer, regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(c) *Customer* means a consumer who has a customer relationship with you.

(d) *Customer information* means any record containing nonpublic personal information about a customer of a financial institution, whether in paper, electronic, or other form, that is handled

or maintained by or on behalf of you or your affiliates.

(e)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) For example:

(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(E) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(F) Enters into a lease of personal property on a non-operating basis with you;

(G) Obtains financial, investment, or economic advisory services from you for a fee;

(H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you;

(I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a financial institution or department of any company);

(J) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer or attempt to collect any amount from the consumer on the account;

(K) Obtains real estate settlement services from you; or

(L) Has a loan for which you own the servicing rights.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution; purchasing a money order from you; cashing a check with you; or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan;

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions;

(D) The consumer obtains one-time personal or real property appraisal services from you; or

(E) The consumer purchases checks for a personal checking account from you.

(f) *Encryption* means the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key, consistent with current cryptographic standards and accompanied by appropriate safeguards for cryptographic key material.

(g)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(h)(1) *Financial institution* means any institution the business of which is engaging in an activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). An institution that is significantly engaged in financial activities, or significantly engaged in activities incidental to such financial activities, is a financial institution.

(2) Examples of financial institutions are as follows:

(i) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(F)), and issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(ii) An automobile dealership that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(iii) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(iv) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or seeking placement with the finance, accounting or audit departments of any company is a financial institution because such career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(v) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines, is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(vi) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(A), and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(vii) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(A).

(viii) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(G).

(ix) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 225.86(b)(2) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(G).

(x) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity

listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(xi) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(xii) An investment advisory company and a credit counseling service are each financial institutions because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(C).

(xiii) A company acting as a finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate is a financial institution because acting as a finder is an activity that is financial in nature or incidental to a financial activity listed in 12 CFR 225.86(d)(1).

(3) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*);

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party other than as permitted by §§ 313.14 and 313.15; or

(iv) Entities that engage in financial activities but that are not significantly engaged in those financial activities, and entities that engage in activities incidental to financial activities but that are not significantly engaged in activities incidental to financial activities.

(4) Examples of entities that are not significantly engaged in financial activities are as follows:

(i) A retailer is not a financial institution if its only means of extending credit are occasional ''lay away'' and deferred payment plans or accepting payment by means of credit cards issued by others.

(ii) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

(iii) A merchant is not a financial institution merely because it allows an individual to ''run a tab.''

(iv) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.

(i) *Information security program* means the administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.

(j) *Information system* means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information containing customer information or connected to a system containing customer information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental controls systems that contains customer information or that is connected to a system that contains customer information.

(k) *Multi-factor authentication* means authentication through verification of at least two of the following types of authentication factors:

(1) Knowledge factors, such as a password;

(2) Possession factors, such as a token; or

(3) Inherence factors, such as biometric characteristics.

(l)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (l)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) For example:

(i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information (that is not publicly available), such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived, in whole or in part, using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(m) *Penetration testing* means a test methodology in which assessors attempt to circumvent or defeat the security features of an information system by attempting penetration of databases or controls from outside or inside your information systems.

(n)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) For example:

(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on, or servicing, a credit account;

(F) Any information you collect through an internet ''cookie'' (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(o)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) For example:

(i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a website that is available to the general public on an unrestricted basis. A website is not restricted merely because an internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis.* (A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(p) *Security event* means an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form.

(q) *Service provider* means any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial institution that is subject to this part.

(r) *You* includes each ''financial institution'' (but excludes any ''other person'') over which the Commission has enforcement jurisdiction pursuant to section 505(a)(7) of the Gramm-Leach-Bliley Act.

■ 4. In § 314.3, revise paragraph (a) to read as follows:

§ 314.3 Standards for safeguarding customer information.

(a) *Information security program.* You shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to your size and complexity, the nature and scope of your activities, and the sensitivity of any customer information at issue. The information security program shall include the elements set forth in § 314.4 and shall be reasonably designed to achieve the objectives of this part, as set forth in paragraph (b) of this section.

* * * * *

■ 5. Revise § 314.4 to read as follows:

§ 314.4 Elements.

In order to develop, implement, and maintain your information security program, you shall:

(a) Designate a qualified individual responsible for overseeing and implementing your information security program and enforcing your information security program (for purposes of this part, ''Qualified Individual''). The Qualified Individual may be employed by you, an affiliate, or a service provider. To the extent the requirement in this paragraph (a) is met using a service provider or an affiliate, you shall:

(1) Retain responsibility for compliance with this part;

(2) Designate a senior member of your personnel responsible for direction and oversight of the Qualified Individual; and

(3) Require the service provider or affiliate to maintain an information security program that protects you in accordance with the requirements of this part.

(b) Base your information security program on a risk assessment that identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assesses the sufficiency of any safeguards in place to control these risks.

(1) The risk assessment shall be written and shall include:

(i) Criteria for the evaluation and categorization of identified security risks or threats you face;

(ii) Criteria for the assessment of the confidentiality, integrity, and availability of your information systems and customer information, including the adequacy of the existing controls in the context of the identified risks or threats you face; and

(iii) Requirements describing how identified risks will be mitigated or accepted based on the risk assessment and how the information security program will address the risks.

(2) You shall periodically perform additional risk assessments that reexamine the reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and reassess the sufficiency of any safeguards in place to control these risks.

(c) Design and implement safeguards to control the risks you identity through risk assessment, including by:

(1) Implementing and periodically reviewing access controls, including technical and, as appropriate, physical controls to:

(i) Authenticate and permit access only to authorized users to protect against the unauthorized acquisition of customer information; and

(ii) Limit authorized users' access only to customer information that they need to perform their duties and functions, or, in the case of customers, to access their own information;

(2) Identify and manage the data, personnel, devices, systems, and facilities that enable you to achieve business purposes in accordance with their relative importance to business objectives and your risk strategy;

(3) Protect by encryption all customer information held or transmitted by you both in transit over external networks and at rest. To the extent you determine that encryption of customer information, either in transit over external networks or at rest, is infeasible, you may instead secure such customer information using effective

alternative compensating controls reviewed and approved by your Qualified Individual;

(4) Adopt secure development practices for in-house developed applications utilized by you for transmitting, accessing, or storing customer information and procedures for evaluating, assessing, or testing the security of externally developed applications you utilize to transmit, access, or store customer information;

(5) Implement multi-factor authentication for any individual accessing any information system, unless your Qualified Individual has approved in writing the use of reasonably equivalent or more secure access controls;

(6)(i) Develop, implement, and maintain procedures for the secure disposal of customer information in any format no later than two years after the last date the information is used in connection with the provision of a product or service to the customer to which it relates, unless such information is necessary for business operations or for other legitimate business purposes, is otherwise required to be retained by law or regulation, or where targeted disposal is not reasonably feasible due to the manner in which the information is maintained; and

(ii) Periodically review your data retention policy to minimize the unnecessary retention of data;

(7) Adopt procedures for change management; and

(8) Implement policies, procedures, and controls designed to monitor and log the activity of authorized users and detect unauthorized access or use of, or tampering with, customer information by such users.

(d)(1) Regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures, including those to detect actual and attempted attacks on, or intrusions into, information systems.

(2) For information systems, the monitoring and testing shall include continuous monitoring or periodic penetration testing and vulnerability assessments. Absent effective continuous monitoring or other systems to detect, on an ongoing basis, changes in information systems that may create vulnerabilities, you shall conduct:

(i) Annual penetration testing of your information systems determined each given year based on relevant identified risks in accordance with the risk assessment; and

(ii) Vulnerability assessments, including any systemic scans or reviews of information systems reasonably designed to identify publicly known security vulnerabilities in your information systems based on the risk assessment, at least every six months; and whenever there are material changes to your operations or business arrangements; and whenever there are circumstances you know or have reason to know may have a material impact on your information security program.

(e) Implement policies and procedures to ensure that personnel are able to enact your information security program by:

(1) Providing your personnel with security awareness training that is updated as necessary to reflect risks identified by the risk assessment;

(2) Utilizing qualified information security personnel employed by you or an affiliate or service provider sufficient to manage your information security risks and to perform or oversee the information security program;

(3) Providing information security personnel with security updates and training sufficient to address relevant security risks; and

(4) Verifying that key information security personnel take steps to maintain current knowledge of changing information security threats and countermeasures.

(f) Oversee service providers, by:

(1) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue;

(2) Requiring your service providers by contract to implement and maintain such safeguards; and

(3) Periodically assessing your service providers based on the risk they present and the continued adequacy of their safeguards.

(g) Evaluate and adjust your information security program in light of the results of the testing and monitoring required by paragraph (d) of this section; any material changes to your operations or business arrangements; the results of risk assessments performed under paragraph (b)(2) of this section; or any other circumstances that you know or have reason to know may have a material impact on your information security program.

(h) Establish a written incident response plan designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information in your control. Such incident response plan shall address the following areas:

(1) The goals of the incident response plan;

(2) The internal processes for responding to a security event;

(3) The definition of clear roles, responsibilities, and levels of decision-making authority;

(4) External and internal communications and information sharing;

(5) Identification of requirements for the remediation of any identified weaknesses in information systems and associated controls;

(6) Documentation and reporting regarding security events and related incident response activities; and

(7) The evaluation and revision as necessary of the incident response plan following a security event.

(i) Require your Qualified Individual to report in writing, regularly and at least annually, to your board of directors or equivalent governing body. If no such board of directors or equivalent governing body exists, such report shall be timely presented to a senior officer responsible for your information security program. The report shall include the following information:

(1) The overall status of the information security program and your compliance with this part; and

(2) Material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, service provider arrangements, results of testing, security events or violations and management's responses thereto, and recommendations for changes in the information security program.

■ 6. Revise § 314.5 to read as follows:

§ 314.5 Effective date.

Section 314.4(a), (b)(1), (c)(1) through (8), (d)(2), (e), (f)(3), (h), and (i) are effective as of December 9, 2022.

■ 7. Add § 314.6 to read as follows:

§ 314.6 Exceptions.

Section 314.4(b)(1), (d)(2), (h), and (i) do not apply to financial institutions that maintain customer information concerning fewer than five thousand consumers.

By direction of the Commission, Commissioners Phillips and Wilson dissenting.

April Tabor,

Secretary.

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

Appendix—Statements Issued on October 27, 2021

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter Regarding Regulatory Review of the Safeguards Rule

Today the FTC is significantly strengthening the Safeguards Rule,[1] first promulgated by the FTC twenty years ago pursuant to a Congressional directive to protect personal information that is stored by financial institutions. This revamping—the first time in the Rule's history—is sorely needed. In the twenty years since the Rule was first issued, the complexity of information security has increased drastically, the use of computer networks in every aspect of life has expanded exponentially, and, most notably, an unending chain of damaging data breaches caused by inadequate security have cost Americans heavily.[2] The amendments adopted today require financial institutions to develop information security programs that can meet the challenges of today's security environment.

For Americans, the harms stemming from the types of security vulnerabilities that this Rule addresses are all too real. Victims of breaches have their most sensitive information exposed, making them more vulnerable to identity theft, phishing attacks, and other forms of fraud.[3] In 2018, almost 10 percent of Americans suffered some form of identity theft, costing many of them hundreds of dollars and dozens of hours of time, an experience that many describe as distressing.[4] For some, the cost is much higher, with victims losing tens of thousands of dollars.[5]

The Rule amendments the FTC is issuing today are strongly supported by the evidence in the record.[6] The evidence gathered from information security experts, industry associations, and consumer groups—those with hands-on experience in the area and knowledge of the field—decisively show that the amendments are necessary. Of course, all of this information supplements the experience that Commission staff has obtained over twenty years of enforcing the Rule, and gained through investigations of companies' data security practices under the FTC's deception and unfairness authority.

The dissent's conclusion that these amendments are unnecessary is belied by both the reality of rampant data security breaches as well as the robust evidentiary record. The recent history of major data breaches affecting millions of consumers shows that more needs to be done to protect consumers' sensitive information. Despite the increasing sophistication of cyberattacks, many businesses continue to offer inadequate security.[7] In particular, the massive Equifax breach, which the FTC alleged was caused by inadequate data security that could have been easily corrected by the company, is a glaring example of how a financial institution's lax security practices can have devastating consequences for Americans.[8] The dissent's suggestion that our current framework is sufficient falls flat in the face of such a stark example of the harm that can arise from avoidable lax security practices by covered financial institutions. Moreover, the dissent's complaint that the rule is also informed by evidence arising from breaches and practices occurring in other types of industries misses the mark. Not only is there substantial evidence in the rulemaking record clearly illustrating security lapses of financial institutions that are covered by the Rule,[9] but the implication that we shouldn't use our broader knowledge of common security pitfalls is unwise.

The record evidence also shows that the amendment's requirements track bedrock principles of data security and represent proven elements of effective data security programs that reduce the risk of breaches.[10]

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[1] 16 CFR part 314. Pursuant to the Gramm Leach Bliley Act (''GLB'' or ''GLBA''), Public Law 106–102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.), the Commission promulgated the Safeguards Rule in 2001.

[2] *See, e.g.*, 2020 Internet Crime Report, Fed. Bur. Investigations,at 20 (Mar. 2021) (reporting consumer loss of over $128 million resulting from corporate data breaches to those who filed complaints in 2020 alone); Int'l Bus. Mach, Cost of a Data Breach, at 4 (2021) (estimating that the average cost of single data breach has risen to $4.24 million).

[3] 2013 Identity Fraud Report: Data Breaches Becoming a Treasure Trove for Fraudsters, Javelin Strategy, at 1 (Feb. 2013) (reporting that 1 in 4 recipients of a data breach notification become victims of identity theft); Michelle Singletary, *Your online profile may help identity thieves, Washington Post* (Feb. 28, 2012), *https://www.washingtonpost.com/business/economy/michelle-singletary-your-online-profile-may-help-identity-thieves/2012/02/28/gIQAXFjygR_story.html* (reporting that recipients of data breach letters are 9.5% more likely to suffer identity theft).

[4] *See* Erika Harrell, *Victims of Identity Theft, 2018,* U.S. Dep't of Just., at 1 (Apr. 2021), *https://bjs.ojp.gov/content/pub/pdf/vit18.pdf.*

[5] *See* 2021 Consumer Aftermath Report, Identity Theft Resource Center (2021), at 6 (finding that in a study of 427 identity crime victims, 21% of them suffered losses of over $20,000).

[6] The Commission first sought public comments on the proposed amendments in April 2019. *See* Privacy of Consumer Financial Information Rule Under the Gramm-Leach-Bliley Act, 84 FR 13150; Standards for Safeguarding Customer Information, 84 FR 13158 (April 4, 2019). The agency received almost 50 comments from consumer groups, industry associations, and data security experts. *See* FTC Seeks Comment on Proposed Amendments to Safeguards and Privacy Rules, 16 CFR part 314, Project No. P145407, (FTC–2019–0019) (''2019 Safeguards and Privacy NPRM ''), *https://www.regulations.gov/docket/FTC-2019-0019/document.* Further, the Commission conducted a workshop discussing the proposed amendments with information security professionals and experts, including IT staff from financial institutions covered by the Safeguards Rule. *See* Transcript, Information Security and Financial Institutions: An FTC Workshop to Examine Safeguards Rule, Fed. Trade Comm'n (July 13, 2020) (''Safeguards Workshop''), *https://www.ftc.gov/system/files/documents/public_events/1567141/transcript-glb-safeguards-workshop-full.pdf.* Connected with the workshop, the Commission sought and received another round of public comments on the amendments. The eleven relevant public comments relating to the subject matter of the July 13, 2020, workshop can be found here: Postponement of Public Workshop Related to Proposed Changes to the Safeguards Rule, 85 FR 23354 (FTC–2020–0038) (Apr. 27, 2020) (''Workshop Comment Docket''), *https://www.regulations.gov/document/FTC-2020-0038-0001.*

[7] *See, e.g.,* Electronic Privacy Information Center, Comment Letter No. 55 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019), at 3 (Aug. 1, 2019) (citing dramatic increase in data breaches at financial services firms affecting millions of consumers), *https://www.regulations.gov/comment/FTC-2019-0019-0055;* Consumer Reports, Comment Letter No. 52 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019) (Aug. 2, 2019), *https://www.regulations.gov/comment/FTC-2019-0019-0052* (noting several high profile data breaches at financial institutions as evidence for the need for stronger regulation); Inpher, Inc., Comment Letter No. 50 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019), at 1 (Aug. 1, 2019), *https://www.regulations.gov/comment/FTC-2019-0019-0050* (pointing to major breaches at financial institutions as evidence for the need of stronger security regulations); Independent Community Bankers of America, Comment Letter No. 35 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019) (Aug. 2, 2019), *https://www.regulations.gov/comment/FTC-2019-0019-0035* (noting that FTC-regulated financial institutions are subject to less stringent security requirements than those regulated by banking agencies, even though many handle the same types of information as those financial institutions); National Consumer Law Center et al., Comment Letter No. 58 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019) (Aug. 2, 2019), *https://www.regulations.gov/document/FTC-2019-0019-0058* (arguing that the recent Equifax breach showed the need for strengthening the Safeguards Rule); Cisco Systems, Inc., Comment Letter No. 51 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019) (Aug. 2, 2019), *https://www.regulations.gov/document/FTC-2019-0019-0051* (noting that sophisticated hacking techniques used in state sponsored attacks are likely to be adopted by ''more garden variety, less sophisticated hackers.''); Safeguards Workshop, at 24–26 (July 13, 2020) (remarks of Chris Cronin) (stating that many companies do not conduct complete or adequate risk assessments). *Id.* at 38–39 (remarks of Serge Jorgensen) (noting that businesses' understanding of the need for security has improved, but that they continue to struggle to implement controls across business units). *Id.* at 39–41 (remarks of Chris Cronin) (stating that, ''as a rule,'' businesses of all sizes are ''behind'' on cybersecurity, attributing this in part to consultants whose advice about reasonable security is motivated by a desire to ''make the clients happy''). *Id.* at 43 (remarks of Pablo Molina) (citing ''the mounting losses that come from cybercrime'' as evidence that many businesses are ''falling behind'' cybercriminals). *Id.* at 114 (remarks of Brian McManamon) (noting that ''the proposed changes are the minimum necessary to have an effective security program in place.''). *Id.* at 44 (remarks of Sam Rubin) (noting that, in his experience, companies make significant investments in technical security measures but that investment in personnel to oversee and use those measures is ''a huge shortcoming that I'm seeing in the field.''); The Clearing House Association LLC, Comment Letter No. 49 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019), at 7–9 (Aug. 2, 2019), *https://www.regulations.gov/comment/FTC-2019-0019-0049* (citing a 2018 study by the Center for Financial Inclusion that showed widespread data security failures among financial technology companies around the globe).

[8] Press Release, Fed. Trade Comm'n, Equifax to Pay $575 Million as Part of Settlement with FTC, CFPB, and States Related to 2017 Data Breach, (July 22, 2019), *https://www.ftc.gov/news-events/press-releases/2019/07/equifax-pay-575-million-part-settlement-ftc-cfpb-states-related.*

[9] *See infra,* note 7.

[10] *See, e.g.,* for Single Qualified Individual Requirement: National Consumer Law Center et al., Continued

supra note 7, at 3 (arguing that a clear line of reporting with a single responsible individual could have prevented the Equifax consumer data breach); Safeguards Workshop, at 182–84 (remarks of Adrienne Allen) (stating that without a single responsible individual, information security staff ''can fall into traps of each relying on someone else to make a hard call . . . [In a program without a single coordinator] issues can sometimes fall through the cracks.''). *Id.* at 184–85 (remarks of Michele Norin) (''I think it's extremely important to have a person in front of the information security program. I think that there are so many components to understand, to manage, to keep an eye on. I think it's difficult to do that if it's part of someone else's job. And so I found that it's extremely helpful to have a person in charge of that program just from a pure basic management perspective and understanding perspective.''); Risk Assessment Requirement: *Id.* at 25 (remarks of Chris Cronin) (stating that evaluating the likelihoods and impacts of potential security risks and evaluating existing controls is an important component of a risk assessment). *Id.* at 29–30 (remarks of Serge Jorgensen) (emphasizing the importance of risk assessments as tools for adjusting existing security measures to account for both current and future security threats); Encryption Requirement: Princeton University Center for Information Technology Policy, Comment Letter No. 54 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019), at 3 (Aug. 2, 2019), *https://www.regulations.gov/document/FTC-2019-0019-0054* (noting the effectiveness of encryption); Inpher, *Inc., supra* note 7, at 4; Safeguards Workshop, at 225 (remarks of Matthew Green) (noting website usage of encryption is above 80 percent; ''Let's Encrypt'' provides free TLS certificates; and costs have gone down to the point that if a financial institution is not using TLS encryption for data in motion, it is making an unusual decision outside the norm). *Id.* at 106 (remarks of Rocio Baeza) (''[T]he encryption of data in transit has been standard. There's no pushback with that.''); Multifactor Authentication Requirement: Princeton University Center for Information Technology Policy, *supra* note 10, at 6–7; Electronic Privacy Information Center, *supra,* note 7, at 8; National Consumer Law Center et al., *supra* note 7, at 2; Safeguards Workshop, at 102 (remarks of Brian McManamon) (stating that his company TECH LOCK supports requiring multi-factor authentication for users connecting from internal networks). *Id.* at 266 (remarks of Matthew Green) (explaining that passwords are not enough of an authentication feature but when MFA is used and deployed, the defenders can win against attackers). *Id.* at 239 (describing how because smart phones have modern secure hardware processors, biometric sensors and readers built in, increasingly consumers can get the security they need through the devices they already have by storing cryptographic authentication keys on the devices and then using the phone to activate them); Incident Response Plan: Credit Union National Association, Comment Letter No. 30 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019), at 2 (Aug. 1, 2019), *https://www.regulations.gov/document/FTC-2019-0019-0030* (noting that that an incident response plan ''helps ensure that an entity is prepared in case of an incident by planning how it will respond and what is required for the response.''). Consumer Reports, *supra* note 7, at 6 (observing that ''a written incident response plan is an essential component of a good security system.''); HITRUST, Comment Letter No. 18 on 2019 Safeguards and Privacy NPRM (FTC–2019–0019), at 2 (July 1, 2019), *https://www.regulations.gov/document/FTC-2019-0019-0018* (commenting that incident response plans can help organizations ''to better allocate limited resources.). Safeguards Workshop, at 52 (remarks of Serge Jorgenson) (observing that a prompt response to an incident can prevent a ''threat actor running around in my environment for days, months, years, and able to access anything they want.''); Board Reporting Requirement: Workshop participants Adrienne Allen, Karthik Rangarajan, and Michele Norin each emphasized that such reporting can aid decision making. *See* Safeguards Workshop, at 201–09; *see also* Rocio Baeza, Comment Letter No. 12 on Workshop Comment Docket (FTC–2020–0038), at 3–8 (Aug. 12, 2020), *https://www.regulations.gov/comment/FTC-2020-0038-0012* (supporting requirement and providing sample report form and compliance questionnaire); Juhee Kwon et al., *The Association Between Top Management Involvement and Compensation and Information Security Breaches,* J. L. Info. Sys., at 219–236 (2013) (''. . . the involvement of an IT executive decreases the probability of information security breach reports by about 35 percent . . .''); Julia L. Higgs et al., *The Relationship Between Board-Level Technology Committees and Reported Security Breaches,* J. L. Info. Sys., at 79–98 (2016) (''[A]s a technology committee becomes more established, its firm is not as likely to be breached. To obtain further evidence on the perceived value of a technology committee, this study uses a returns analysis and finds that the presence of a technology committee mitigates the negative abnormal stock returns arising from external breaches.'').

The amended Rule requires that financial institutions' information security plans address such core concepts as controlling who is accessing their system,[11] understanding their system,[12] monitoring what users do in their system,[13] and protecting the information contained in their system.[14] More particularly, it also requires encryption of customer information and the use of multifactor authentication. Adopting these practices will reduce the chances of a breach occurring.

In fact, it is likely that the massive breach at Equifax could have been prevented or mitigated by adopting practices required by these amendments. For example, the Commission's complaint alleged that the vulnerability that led to the breach was not detected for four months because Equifax's automated vulnerability scanner was not configured to scan all of the networks in the system, something that could have been prevented if Equifax had performed an adequate inventory of its system as required by § 314.4(c)(2) of the amended Rule.[15] Equifax allegedly did not encrypt the data of 145 million consumers as required by § 314.4(c)(3) of the amended Rule; such encryption might have prevented the intruders from misusing individuals' sensitive information, even if they were able to obtain it.[16] In addition, the complaint charged that Equifax did not adequately monitor activity on its network, which allowed intruders to access and use their network undetected for months; such monitoring will be required by § 314.4(c)(8).[17] Finally, and perhaps most importantly, Equifax split authority over its information security program between two people, which caused failures of communications and oversight.[18] Indeed, the U.S. House Committee on Oversight and Government identified Equifax's organization as one of the major causes of the breach.[19] Appointing a single Qualified Individual as the coordinator of Equifax's information security system, as required by § 314.4(a) of the amended Rule, could have helped prevent or limit the scope of one of the largest breaches in American history. By implementing the measures required in the amended Rule, financial institutions will prevent or mitigate many future breaches, protecting consumers and their information.

There is also no support for the dissent's notion that the amendments eliminate financial institutions' flexibility in a way that will hurt smaller businesses. The amendments require that information security programs address certain aspects of security, but do not prescribe any particular method for doing so. Specifically, the amended Rule requires that the information security program address areas such as access control, change management, information disposal, and monitoring user activity, but it does not require that financial institutions take any particular action in those areas. In fact, the Rule recognizes the concerns of small businesses and adopts appropriate flexibilities. Section 314.6 of the revised Rule exempts financial institutions that maintain information concerning fewer than 5,000 consumers from certain requirements. In addition, financial institutions with smaller and simpler systems may determine that minimal procedures are required in those areas, and they retain flexibility under these amendments to follow that route. Moreover, the record contains significant evidence that there are free and low-cost solutions for smaller businesses with more modest data security needs.[20]

[11] 16 CFR 314.4(c)(1).

[12] 16 CFR 314.4(c)(2).

[13] 16 CFR 314.4(c)(8).

[14] 16 CFR 314.4(c)(3) and 314.4(c)(5).

[15] Compl. for Permanent Injunction & Other Relief., *FTC* v. *Equifax, Inc.,* No. 1:19–mi–99999–UNA (N.D. Ga. July 22, 2019) ¶ 17.

[16] *Id.* ¶ 22.E.

[17] *Id.* ¶ 22.F.

[18] While the dissent questions the requirements in the Rule regarding elevating security issues to the top levels of the corporate structure, research supports these requirements. Boards are becoming increasingly involved in cybersecurity governance, as demonstrated by surveys of practitioners and the growth of literature aimed at educating board members on cybersecurity. Some studies suggest that Board attention to data security decisions can dramatically improve data safeguarding. For example, one study found a 35% decrease in the probability of information security breaches when companies include the Chief Information Security Officer (or equivalent) in the top management team and the CISO has access to the board. *See* Juhee Kwon et al., *supra* note 10. *see also* Safeguards Workshop, at 201–09.

[19] U.S. H. Rep. Comm. on Oversight and Gov. Reform, Majority Staff Report on The Equifax Data Breach, 115th Cong., at 55–62 (Dec. 2018).

[20] *See, e.g.,* Safeguards Workshop, at 267 (remarks of Wendy Nather) (''we have a lot more options, a lot more technologies today than we did before that are making both of these solutions, both encryption and MFA, easier to use, more flexible, in some cases cheaper, and we should be encouraging their adoption wherever possible.''). *Id.* at 265–66 (remarks of Matthew Green) (''I think that we're in a great time when we've reached the point where we can actually mandate that encryption be used. . . . And we've reached the point where now it is something that's come to be and we can actually build well.''). *Id.* at 229–30 (remarks of Randy Marchany) (noting that encryption is already built into the Microsoft Office environment and that a number of Microsoft products, such as

We believe that these amendments represent a much-needed step forward in protecting Americans' data security. Given growing recognition that the requirements captured in the Rule represent best practices, some financial institutions seem to have already taken appropriate steps to protect customers' data and meet the requirements set out in the amended Rule. It is important, though, to require those that lag behind to strengthen their security and prevent future breaches *before* they occur, rather than in the wake of a devastating breach after the damage has already been done.

Joint Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson in the Matter of the Final Rule Amending the Gramm-Leach-Bliley Act's Safeguards Rule

In 1999, Congress passed the Gramm-Leach-Bliley Act, which charged the Federal Trade Commission (the ''Commission'') with promulgating and enforcing a regulation to ensure that financial firms take care to safeguard the information they collect from consumers.[1] The Safeguards Rule [2] has established more data security obligations for consumer financial data than for data collected by non-financial firms, a gap that underlies our view—shared by our colleagues—that congressional data security legislation is warranted.

One hallmark of the Safeguards Rule is its recognition that, in a world of continuously evolving threats and standards, a one-size-fits-all approach to data security may not work. Under Democratic and Republic leadership, the Commission has repeatedly emphasized this principle.[3] We have traditionally eschewed an overly prescriptive approach, both to data security in general and to the Safeguards Rule itself.[4] The FTC has never demanded ''perfect'' security because the Commission has recognized that data security is neither cost- nor consequence-free, and often requires tradeoffs.[5] At the same time, during our tenure, the Commission has continued to enforce data security standards vigorously, including those embodied in the Safeguards Rule.[6]

In March 2019, the Commission approved a Notice of Proposed Rulemaking (''NPRM'') proposing additional requirements to the Safeguards Rule. While we recognize the value in regularly reviewing our rules and updating them as needed, we dissented then because the proposal lacked data demonstrating the need for and efficacy of the proposed amendments.[7]

We appreciate Staff's diligent work on this rule and many of the modifications made to the original proposal. The **Federal Register** Notice does a commendable job of presenting the full panoply of comments that the Commission received. The FTC is at its best when it seeks input from experts, industry, and consumer groups; this rulemaking process reflects a commitment to that approach. But the comment period did not produce data demonstrating that the previous iteration of the rule was inadequate, or that the costs and consequences of the new prescriptive obligations will translate into actual consumer safeguards. That was our concern, and the comments did not allay it.

In fact, as several commenters observed, the new prescriptive requirements could weaken data security by diverting finite resources towards a check-the-box compliance exercise and away from risk management tailored to address the unique security needs of individual financial institutions. It is ironic that the revisions mandate a risk assessment and then order firms to prioritize specified precautions ahead of the risks and needs counseled by that assessment. The revisions also impose intrusive corporate governance obligations wholly unsupported by record evidence of prevalent failures at the senior managerial level.

For these reasons, which we explain more fully below, we dissent.

The Record Fails To Provide a Basis for the New Requirements

We expressed concern in March 2019 that some of the proposals in the NPRM tracked issues that arose in cases involving firms not covered by the Safeguards Rule. That is, those failures occurred at companies to which the Safeguards Rule did not apply. And heightened obligations imposed in a settlement context, when a company has engaged in risky and allegedly illegal behavior, may not be appropriate for all market participants. We did not see evidence that covered firms had a systematic problem—*i.e.,* that the Rule was not

Spreadsheets, Excel, Docs, and PowerPoint, support that encryption feature). *Id.* at 225. *Id.* at 106 (Remarks of Rocio Baeza) (''[T]he encryption of data in transit has been standard. There's no pushback with that.''). *Id.* at 74 (remarks of James Crifasi) (stating that car dealerships can rely on existing staff for the role of Qualified Individual). *Id.* at 78–79 (remarks of Lee Waters) (stating that any dealership with any IT staff at all would have someone who could assume the role of ''qualified individual,'' perhaps requiring some additional research or outside help). *Id.* at 81–82 (remarks of Rocio Baeza) (stating that companies may use an existing employee for the role and ''for any areas where there may be skill gaps, that can be supplemented with either certifications or some type of education.''). *Id.* at 89–90 (remarks of Brian McManamon) (noting that the size of a financial institution and the amount and nature of the information that it holds factor into an appropriate information security program); Presentation Slides, Inf. Security & Fin. Inst.: An FTC Workshop of GLB Safeguards, at 27–28 (July 13, 2020) (slides Accompanying remarks of Rocio Baeza, ''Models for Complying to the Safeguards Rule Changes) (''Safeguards Workshop Presentation Slides'') *https://www.ftc.gov/system/files/documents/public_events/1567141/slides-glb-workshop.pdf* (describing three different compliance models: In-house, outsource, and hybrid, with costs ranging from $199 per month to more than $15,000 per month). Safeguards Workshop, at 81–83 (remarks of Rocio Baeza) (describing three compliance models in more detail); Safeguards Workshop Presentation Slides, at 29 (remarks of Brian McManamon, ''Sample Pricing'') (estimating the cost of cybersecurity services based on number of endpoints). *Id.* at 83–85.

[1] Public Law 106–102, 113 Stat. 1338 (1999). Notably, even as it transferred authority for other consumer financial regulation to the Consumer Financial Protection Bureau in the Dodd-Frank Act, Congress left this rulemaking authority with the Commission, a vote of confidence in our approach. 15 U.S.C. 6804(a)(1).

[2] 16 CFR part 314.

[3] *See, e.g.,* Federal Trade Commission, Statement Marking the FTC's 50th Data Security Settlement, at 1 (Jan. 31, 2014), *https://www.ftc.gov/system/files/documents/cases/140131gmrstatement.pdf* (''FTC Data Security Statement'') (''Through its settlements, testimony, and public statements, the Commission has made clear that it does not require perfect security; reasonable and appropriate security is a continuous process of assessing and addressing risks; there is no one-size-fits-all data security program; and the mere fact that a breach occurred does not mean that a company has violated the law.''); *see also* Prepared Statement of the Federal Trade Commission: Before the Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, 116 Cong. 3 (2019) (statement of Andrew Smith, Director, Bureau of Consumer Protection) (''[t]here is no one-size-fits-all data security program . . .''), *https://www.ftc.gov/system/files/documents/public_statements/1466607/commission_testimony_re_data_security_senate_03072019.pdf.* Federal Trade Commission, *Stick with Security: A Business Blog Series* (Oct. 2017), *https://www.ftc.gov/news-events/blogs/business-blog/2017/10/stick-security-ftc-resources-your-business.*

[4] FTC Notice of Proposed Rulemaking, 84 FR 13158 (Apr. 4, 2019), *https://www.federalregister.gov/documents/2019/04/04/2019-04981/standards-for-safeguarding-customer-information* (''The Commission continues to believe that a flexible, non-prescriptive Rule enables covered organizations to use it to respond to the changing landscape of security threats, to allow for innovation in security practices, and to accommodate technological changes and advances.'').

[5] Under the FTC's unfairness authority, the Commission brings cases when companies under its jurisdiction fail to employ ''reasonable'' security. FTC Data Security Statement, *supra* note 3 (''The touchstone of the Commission's approach to data security is reasonableness: a company's data security measures must be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities.'').

[6] *See, e.g., In the matter of Ascension Data & Analytics, LLC,* FTC File No. 1923126 (2020), *https://www.ftc.gov/enforcement/cases-proceedings/192-3126/ascension-data-analytics-llc-matter; U.S.* v. *Mortgage Solutions FCS, Inc.,* Civ. Action No. 4:20–cv–110 (N.D. Cal 2020), *https://www.ftc.gov/enforcement/cases-proceedings/182-3199/mortgage-solutions-fcs-inc; FTC* v. *Equifax, Inc.,* Civ. Action No. 1:19–cv–03297–TWT (N.D. Ga. 2019), *https://www.ftc.gov/enforcement/cases-proceedings/172-3203/equifax-inc.*

[7] Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson, Review of Safeguards Rule (Mar. 5, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1466705/reg_review_of_safeguards_rule_cmr_phillips_wilson_dissent.pdf; See, e.g.,* Noah Joshua Phillips (@FTCPhillips), Twitter (Mar. 5, 2019, 3:08 p.m.), *https://twitter.com/FTCPhillips/status/1103024596247289867* (''A reexamination of the Rule may indeed be appropriate and necessary; but, before we borrow from other existing schemes, we must first understand whether the existing Rule is inadequate for its purpose and whether the data supports the efficacy of the alternatives.''); Christine S. Wilson, Remarks at NAD 2020, One Step Forward, Two Steps Back: Sound Policy on Consumer Protection Fundamentals 7–8 (Oct. 5, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1581434/wilson_remarks_at_nad_100520.pdf.*

working.[8] The Commission can—and does—promote best practices and reasonable care requirements through speeches, guidance, reports, and the like, to help financial firms evaluate whether they are taking proper precautions.[9] But new rules that set concrete standards for all companies, regardless of risk, require more justification. Such rules make companies liable for penalties, and could focus efforts on compliance to address penalty deterrence rather than risk.

Dozens of commenters have shared their views on the Safeguards proposal, and FTC Staff held a workshop to evaluate the need to change the Rule. While there is no shortage of *opinions* as to the need and benefits of the proposed changes (nor is there a shortage of opinions critiquing the new requirements), this process failed to provide evidence of market failure or other systemic problems [10] necessitating the proposed changes for firms already governed by the requirements of the Rule. In fact, one commenter that generally supported the rule changes noted that it was not clear that the new rules would have prevented the alleged lapses that led to the Equifax breach, the largest Safeguards case on record.[11]

That these proposals may constitute best practices appropriate to certain firms or situations does not justify imposing them on every firm and in every situation.[12] The FTC historically has been appropriately cautious in mandating specific security practices, and we see no sound basis in the rulemaking record to change that approach.[13]

The Revised Safeguards Rule Is Premature

In our 2019 statement, we expressed concern that the proposals in the NPRM were premature. They are based in large part on the New York Department of Financial Service data security rules,[14] adopted in 2016. At the same time, Congress and the Executive Branch were evaluating new privacy and data security legislation that may overlap with the proposed amendments.[15]

Since our original statement, we have been provided with no additional information on the impact and efficacy of the NYDFS rules.[16] Without this critical input, we do not believe adopting wholesale the NYDFS approach is the prudent course.[17] We would have been better served by monitoring the efficacy, costs and unintended consequences of the NYDFS rules during this ramp-up period. Imposing similar rules on far more firms across a broader array of industries makes even less sense.

Congress, with the encouragement of the Commission, has continued to consider legislative initiatives in this area. Throughout 2019, 2020 and 2021, we saw the release of several draft bills addressing data security, as well as privacy.[18] And other developments, such as data security requirements of the General Data Protection Regulation [19] and new cybersecurity incidents [20] ensure that

[8] Commenters on the proposed rules reflected these same concerns. *See, e.g,* CTIA (comment 34, NPRM) at 4, *https://www.regulations.gov/comment/FTC/2019-0019-0034* (observing that most examples cited in the NPRM are from non-financial firms and arguing that the FTC's action in Equifax demonstrated that the agency is able to use to the current framework effectively); Global Privacy Alliance (comment 38, NPRM) at 4, *https://www.regulations.gov/comment/FTC/2019-0019-0038* (the changes to the rules started not from FTC experience but rather from state laws); Electronic Transactions Association (comment 27, NPRM), *https://www.regulations.gov/comment/FTC/2019-0019-0027* (the current rule is effective and there are no harms that warrant these changes); National Automobile Dealers Association (comment 46, NPRM) at 6, *https://www.regulations.gov/comment/FTC/2019-0019-0046* (''[N]ew requirements for *all* financial institutions should not be based on unrelated enforcement actions that may not be generally applicable to all financial institutions subject to the Rule.'').

[9] Federal Trade Commission, *Data Security, https://www.ftc.gov/datasecurity.*

[10] One study cited by commenters pointed toward widespread problems among fintech firms ''including misuse of cryptography, use of weak cryptography, and excessive permission requirements.'' The Clearing House Association LLC (comment 49, NPRM) at 7–9, *https://www.regulations.gov/comment/FTC/2019-0019-0049* (citing a 2018 study by the Center for Financial Inclusion, *https://content.centerforfinancialinclusion.org/wp-content/uploads/sites/2/2018/09/CFI43-CFI_Online_Security-Final-2018.09.12.pdf*). This study included firms from around the world and did not indicate that this limited set of issues arose in U.S. firms covered by the Safeguards Rule. *See also* National Automobile Dealers Association (comment 46, NPRM) at 46, *https://www.regulations.gov/comment/FTC/2019-0019-0046* (''These requirements have largely not been proven to be necessary or effective.''). Participants at the FTC's July 2020 Workshop generally agreed that companies could invest more in security, but the fact of under-investment does not mean that these changes to the Safeguards Rule constitute the best course of action. FTC, Information Security and Financial Institutions: An FTC Workshop to Examine Safeguards Rule Tr. at 23–70 (July 13, 2020), *https://www.ftc.gov/system/files/documents/public_events/1567141/transcript-glb-safeguards-workshop-full.pdf* (''Safeguards Workshop'').

[11] Consumer Reports (comment 52, NPRM), *https://www.regulations.gov/comment/FTC/2019-0019-0052* at 2. Not all the commenters agreed with this perspective, and some felt that these rules would have prevented the Equifax breach. *See* National Consumer Law Center and others (comment 58, NPRM), *https://www.regulations.gov/comment/FTC/2019-0019-0058.* Chair Khan and Commissioner Slaughter focus on the Equifax breach to justify the adoption of prescriptive and complex data security measures, measures that match the sophistication and complexity of the consumer financial data managed by one of the largest credit bureaus. But even assuming the new rules would have prevented it, one (albeit) high-profile breach, without more, should not be extrapolated to an entire industry with diverse business models housing varied consumer financial data. Reasonable safeguards for a company like Equifax, based on its size and complexity, the nature and scope of its activities, and the sensitivity of the information involved, would likely outpace procedures that would be appropriate or reasonable for a sole proprietorship or small business.

[12] While the Final Rule is based on proposals from New York State Department of Financial Services (''NYDFS''), the FTC imposes its requirements much more broadly than the NYDFS Cybersecurity Requirements for Financial Services Companies, 23 NYCRR Pt. 500. The NYDFS requirements exempt a much larger cross-section of organizations from the most onerous, prescriptive, and expensive provisions in their rule. 23 NYCRR § 500.19. Nor do the exceptions in the Final Rule, while helpful, suffice.

[13] Unfortunately, this is not the first time this Commission has emphasized what we *can* do over what we *should* do. *See, e.g.,* Joint Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson, *In the matter of Resident Home LLC,* Commission File No. 2023179 (Oct. 7, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597270/resident_home_dissenting_statement_wilson_and_phillips_final_0.pdf;* Joint Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson, *U.S.* v. *iSpring Water Systems, LLC,* Commission File No. C4611 (Apr. 12, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1513499/ispring_water_systems_llc_c4611_modified_joint_statement_of_commissioners_phillips_and_wilson_4-12.pdf.*

[14] Cybersecurity Requirements for Financial Services Companies, 23 NYCRR Pt. 500 (2016).

[15] *See* Consumer Data Industry Association (comment 36, NPRM) at 2, *https://www.regulations.gov/document?D=FTC-2019-0019-0036* (noting that the NY rule is too recent and Congress is debating new legislation that should be left to Congress to resolve); National Automobile Dealers Association (comment 46, NPRM) at 46, *https://www.regulations.gov/comment/FTC-2019-0019-0046* (The new rules ''are premature as they are based on untested and new standards in a rapidly changing environment, and in a context where federal debate is ongoing.''); New York Insurance Association (comment 31, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0031* (it is premature to adopt these rules without the benefit of the state's experience).

[16] We appreciate the time and resources the NYDFS invested in commenting on our proposed rule. Though the NYDFS does say that its rules have ''enhanced cybersecurity protection across the financial industry and fostered an environment in which the threat of a cyber attack is taken seriously at all levels of New York's financial services firms,'' it offers no supporting data. New York State Department of Financial Services (comment 40, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0040.*

[17] As several commenters pointed out, the NYDFS rules are more nuanced that the amendments introduced today. For instance, under the NYDFS regulations, certain additional requirements only apply to a category of sensitive data, a limitation not carried through to the Safeguards Rule. *See, e.g.,* U.S. Chamber of Commerce (comment 33, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0033;* CTIA (comment 34, NPRM), *https://www.regulations.gov/comment/FTC/2019-0019-0034;* Electronic Transactions Association (comment 27, NPRM), *https://www.regulations.gov/comment/FTC/2019-0019-0027.* These distinctions only raise more questions and concerns about basing our regulations on the New York rules.

[18] *See, e.g.,* Fourth Amendment is Not for Sale Act, S. 1265, 117th Cong. (2021); Data Care Act of 2021, S. 919, 117th Cong. (2021); Data Protection Act of 2021, S. 2134, 117th Cong. (2021); SAFE DATA Act, S. 2499, 117th Cong. (2021); Consumer Online Privacy Rights Act, S. 2968, 116th Cong. (2019). *See also,* California Privacy Rights Act of 2020, Cal. Civ. Code § 1798.100 *et seq.;* Virginia Consumer Data Protection Act, Va. Code § 59.1–575 *et seq.*; and Colorado Privacy Act, 2021 Colo. ALS 483, 2021 Colo. Ch. 483, 2021 Colo. SB. 190.

[19] Council Directive 2016/679, art. 32 2016 O.J. (L119).

[20] *See, e.g.,* Joseph Menn and Christopher Bing, *Hackers of SolarWinds stole data on U.S. sanctions policy, intelligence probes,* Reuters (Oct. 8, 2021), *https://www.reuters.com/world/us/hackers-solarwinds-breach-stole-data-us-sanctions-policy-intelligence-probes-2021-10-07/;* Stephanie Kelly and Jessica Resnick-ault, *One password allowed hackers to disrupt Colonial Pipeline, CEO tells senators,* Reuters (June 8, 2021), *https://www.reuters.com/business/colonial-pipeline-ceo-tells-senate-cyber-defenses-were-compromised-*

these issues will continue to draw congressional attention. The decisions about tradeoffs in this space are complex and significant for consumers, business, and government; intrusive mandates are best left to the people's representatives rather than to the vagaries of the administrative rulemaking process.[21]

The Revised Rules Inhibit Flexibility and Impose Substantial Costs

The Safeguards Rule originally drafted and evaluated by the Commission embraced a flexible approach, emphasizing protections targeted to a company's size and risk profile.[22] As we wrote in 2019, these new rules move us away from that approach; that loss of flexibility will impose costs without necessarily improving safeguards for consumer data, which should be the point of this exercise.

Commenters and the Commission itself have noted that there are financial impacts to these new requirements.[23] The Small Business Administration's Office of Advocacy stated its belief that the Commission itself does not appear to understand fully the economic impact of the proposed changes to the Safeguards Rule.[24]

The burden of these new rules may also reduce competition and innovation, as smaller firms less able to absorb the financial costs cede ground to larger firms better equipped to handle new regulatory mandates.[25]

Security itself may also suffer. A series of specific rules can incentivize companies to move from a thoughtful assessment of risk and precautions to a check-the-box exercise to ensure that they are complying with regulatory mandates—in other words, from a focus on real security to an emphasis on rule compliance.[26] One commenter cited data demonstrating that when security personnel are busy with compliance and regulatory response, they have less time to focus on a firm's actual security needs.[27] Further, without the flexibility to prioritize, finite resources may be diverted to areas of lower risk but higher regulatory scrutiny; [28] commenters noted the irony of mandating a risk assessment and then ordering firms to prioritize specified precautions ahead of the risks and needs counseled by that assessment.[29] And potentially innovative security practices that address changing threats and needs may be discouraged.[30] As

ahead-hack-2021-06-08; Carly Page, *The Accellion data breach continues to get messier,* TechCrunch (July 8, 2021), *https://techcrunch.com/2021/07/08/the-accellion-data-breach-continues-to-get-messier/;* Peter Valdes-Dapena, *Volkswagen hack: 3 million customers have had their information stolen,* CNN (June 11, 2021), *https://www.cnn.com/2021/06/11/cars/vw-audi-hack-customer-information/index.html.*

[21] Sen. Roger Wicker, Rep. Cathy McMorris Rodgers, & Noah Phillips, *FTC must leave privacy legislating to Congress,* Wash. Examiner (Sept. 29, 2021), *https://www.washingtonexaminer.com/opinion/op-eds/ftc-must-leave-privacy-legislating-to-congress.* Substance aside, businesses and consumers need confidence to plan around new rules. As the recent—and perhaps future—debate about net neutrality rules has demonstrated, agency rules are subject to disruptive swings that undermine such confidence.

[22] The Commission itself acknowledges the importance of flexibility in issuing the Final Rule. *See, e.g.,* Final Rule at 27 (''The Commission, however, believes that the elements provide sufficient flexibilityfor financial institutions to adopt information security programs suited to the size, nature, and complexity of their organization and information systems.'')

[23] *See* Final Rule; American Council on Education (comment 24, NPRM) at 13–14, *https://www.regulations.gov/comment/FTC-2019-0019-0024;* Wisconsin Bankers Association (comment 37, NPRM) at 1–2, *https://www.regulations.gov/comment/FTC-2019-0019-0037;* American Financial Services Association (comment 41, NPRM) at 4, *https://www.regulations.gov/comment/FTC-2019-0019-0041;* National Association of Dealer Counsel (comment 44, NPRM) at 1, *https://www.regulations.gov/comment/FTC-2019-0019-0044;* National Automobile Dealers Association (comment 46, NPRM) at 11, *https://www.regulations.gov/comment/FTC-2019-0019-0046;* National Independent Automobile Dealers Association, (comment 48, NPRM) at 3, *https://www.regulations.gov/comment/FTC-2019-0019-0048;* Gusto and others (comment 11, Workshop) at 2–4, *https://www.regulations.gov/comment/FTC-2019-0019-0011;* National Pawnbrokers Association (comment 3, NPRM) at 2, *https://www.regulations.gov/comment/FTC-2019-0019-0032; See also* Remarks of James Crifasi, Safeguards Workshop, *supra* note 10, Tr. at 72–74, *https://www.ftc.gov/system/files/documents/public_events/1567141/transcript-glb-safeguards-workshop-full.pdf* (study showing that compliance costs are unaffordable for small businesses).

[24] Small Business Administration Office of Advocacy (comment 28, NPRM) at 3–4, *https://www.regulations.gov/comment/FTC-2019-0019-0028* (''An agency cannot consider alternatives that minimize any significant economic impact if the agency does not know what the economic impact of the proposed action is.'').

[25] *See* CTIA (comment 34, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0034* (noting the need for more study on the costs to competition); U.S. Chamber of Commerce (comment 33, NPRM) at 4, *https://www.regulations.gov/comment/FTC-2019-0019-0033* (''Some private organizations can absorb the added costs, while others cannot.''). *See also* Christine S. Wilson, Remarks at the Future of Privacy Forum, A Defining Moment for Privacy: The Time is Ripe for Federal Privacy Legislation 13 (Feb. 6, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1566337/commissioner_wilson_privacy_forum_speech_02-06-2020.pdf* (''Importantly, the legislative framework should also consider competition. Regulations, by their nature, will impact markets and competition. GDPR may have lessons to teach us in this regard. Research indicates that GDPR may have decreased venture capital investment and entrenched dominant players in the digital advertising market.''); Noah Joshua Phillips, Prepared Remarks at internet Governance Forum USA, Keep It: Maintaining Competition in the Privacy Debate (July 27, 2018), *https://www.ftc.gov/system/files/documents/public_statements/1395934/phillips_-_internet_governance_forum_7-27-18.pdf* (discussing the competition impacts of new privacy rules).

[26] *See* U.S. Chamber of Commerce (comment 33, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0033;* Consumer Data Industry Association (comment 36, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0036;* Global Privacy Alliance (comment 38, NPRM), *https://www.regulations.gov/comment/FTC/2019-0019-0038.* While some parts of the rule, such as encryption requirements, allow security officials to make a written determination that a different precaution is appropriate, it seems unlikely that any individual security official will risk liability to make such a determination and the specific requirements here will likely become the default rule. American Council on Education (comment 24, NPRM) at 12, *https://www.regulations.gov/comment/FTC-2019-0019-0024* (''In the absence of a clear delineation by the Commission of what alternatives an institutional information security executive might approve that the Commission considers reasonably equivalent, and assurance that they are reasonably applicable in our contexts, that pressure release valve in the requirement seems unlikely to release much pressure.''); Software Information & Industry Association (comment 29, NPRM) at 3, *https://www.regulations.gov/comment/FTC-2019-0019-0056* (''The mere threat of a *per se* law violation will chill these approvals except in the most ironclad circumstances, thereby potentially thwarting industry-wide adoption of new and better security standards.''); New York Insurance Association (comment 31, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0031* (''This runs the risk that companies might feel compelled to encrypt all consumer data regardless of whether the CISO's compensating controls would be second guessed in the event a company were to lose unencrypted customer information.''); Mortgage Bankers Association (comment 26, NPRM) at 4, *https://www.regulations.gov/comment/FTC-2019-0019-0026* (noting the obligation to prepare an incident response plan had ''the potential to cripple small businesses under the pressure of repeatedly checking the boxes for potential harmless events.'').

[27] Bank Policy Institute (comment 39, NPRM) at 6, *https://www.regulations.gov/comment/FTC-2019-0019-0039* (''When the sector surveyed its information security teams in late 2016, CISOs reported that approximately 40% of their cyber team's time was spent on compliance related matters, not on cybersecurity. Due to one framework issuance, in particular, the reconciliation process delayed one firm's implementation of a security event monitoring tool intended to better detect and respond to cyber-attacks by 3–6 months. With respect to another issuance, another firm stated that 91 internal meetings were held to determine how that issuance aligned with its program and in gathering data for eventual regulatory requests.'').

[28] *See* U.S. Chamber of Commerce (comment 33, NPRM) at 4, *https://www.regulations.gov/comment/FTC-2019-0019-0033* (''the proposed requirements would increasingly divert company resources toward compliance and away from risk management activities that are tailored to businesses' unique security needs.''); Software Information & Industry Association (comment 29, NPRM) at 3, *https://www.regulations.gov/comment/FTC-2019-0019-0056* (''The effect of a prescriptive approach in this enforcement structure is to place companies in the position of forced compliance with potentially unnecessary or inapplicable requirements without the appropriate process for these covered entities to explain to a supervisory authority why it is unnecessary.''); American Financial Services Association (comment 41, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0041.* In some cases, asking too much of small businesses for whom all this is a substantial undertaking may lead them to fail at even the basic protections. Safeguards Workshop, *supra* note 10, Tr. at 118–19 (July 13, 2020), *https://www.ftc.gov/system/files/documents/public_events/1567141/transcript-glb-safeguards-workshop-full.pdf.*

[29] *See* Bank Policy Institute (comment 39, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0039;* Money Services Round Table (comment 53, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0053.*

[30] *See* Consumer Data Industry Association (comment 36, NPRM) at 7–8, *https://www.regulations.gov/comment/FTC-2019-0019-*

Continued

one commenter noted, ''[e]ven today's best practices will be overtaken by future changes in both technology and the capabilities of threat actors,'' [31] and these proscriptive rules lose the ''self-modernizing'' nature of flexible requirements,[32] locking in place the primacy of current practices.[33]

The reduction in flexibility and imposition of these costs must be justified by a significant reduction in risk or some other substantial consumer benefit. But the record provides scant support for these tradeoffs. Or as one commenter put it:

[A]s with many of these requirements, we do not take issue with the notion that there is merit to this step [requiring monitoring], and that many financial institutions will implement some version of this control. However, by making this an explicit, stand-alone requirement, the Commission is enshrining costs and efforts that will be extensive and will likely not be needed in all circumstances.[34]

The Rules Involve the FTC in the Internal Governance Decisions of Covered Firms

The specifics of the proposals also raise issues, as we expressed in 2019, with regard to mandating the appropriate level of board engagement,[35] hiring and training requirements,[36] and program accountability structures.[37] We wrote then, and remain concerned now, that the Commission is substituting its own judgement about governance decisions for those of private companies covered by this Rule.

In certain extraordinary cases involving clear evidence of management failure, we have imposed prescriptive governance obligations on respondents.[38] Those rare and egregious instances cannot justify a similar approach in a broad rulemaking absent a real record of widespread corporate mismanagement or failure at the senior management level.

The Commission has elected to proceed with most of these governance requirements, forcing the hand of management and shifting their priorities to avoid the risk of regulatory action,[39] without clear evidence of their need or efficacy.

Conclusion

Regularly reviewing our rules to ensure that they address the current environment is an important part of the FTC's regular process. But rules have far-reaching and frequently unintended impacts in the real world; when imposing additional legal obligations in the rulemaking context, we must do so with great care. The amended Safeguards Rule replaces a rule that has worked well for 20 years, a rule that took a principle-based approach in order to provide financial institutions flexibility to determine the appropriate and realistic security safeguards for their organizations. The record before us at best fails to convince that the changes are necessary and at worst raises concern about the substantial costs and risks in imposing these amendments. Accordingly, we dissent.

[FR Doc. 2021–25736 Filed 12–8–21; 8:45 am]

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0036 (minimization requirement can impact innovative uses more broadly).

[31] *See* Cisco Systems Inc. (comment 51, NPRM) at 3, *https://www.regulations.gov/comment/FTC-2019-0019-0051* (noting also in the context of multi-factor authentication that there will come a time when it is no longer the ''appropriate baseline'' and ''covered entities could find themselves in full compliance with the rule as long as they use access control technology no less protective than MFA as defined in the Proposed Amendments.'').

[32] National Automobile Dealers Association (comment 46, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0046.*

[33] *See* CTIA (comment 34, NPRM) at 3–5, *https://www.regulations.gov/comment/FTC-2019-0019-0034* (flexibility in the rule allowed it to keep up with evolving threats, whereas new rule could limit innovation); HITRUST Alliance (comment 18, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0018* (expressing concern about creating outdated requirements); The American Financial Services Association (comment 41, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0041.*

[34] National Automobile Dealers Association (comment 46, NPRM) *https://www.regulations.gov/comment/FTC-2019-0019-0046* (arguing that the Commission needs additional study into the costs and benefits); *See* also Consumer Data Industry Association (comment 36, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0036* (benefits of new rule not justified by tradeoffs).

[35] American Council on Education (comment 24, NPRM) at 16, *https://www.regulations.gov/comment/FTC-2019-0019-0024;* National Automobile Dealers Association (comment 46, NPRM) at 41, *https://www.regulations.gov/comment/FTC-2019-0019-0046.*

[36] U.S. Chamber of Commerce (comment 33, NPRM) at 12, *https://www.regulations.gov/comment/FTC-2019-0019-0033;* National Automobile Dealers Association (comment 46, NPRM) at 34–36, *https://www.regulations.gov/comment/FTC-2019-0019-0046.*

[37] *See* Final Rule. *See* also American Council on Education (comment 24, NPRM) at 14, *https://www.regulations.gov/comment/FTC-2019-0019-0024* (critiquing the intrusion on personnel practices).

[38] *U.S.* v. *Facebook, Inc.,* Civ. Action No. 19–cv–2184 (D.D.C. July 24, 2019), *https://www.ftc.gov/enforcement/cases-proceedings/092-3184/facebook-inc.*

[39] These governance rules may not even promote security. *See* Consumer Data Industry Association (comment 36, NPRM), *https://www.regulations.gov/comment/FTC-2019-0019-0036* (arguing that the annual reporting will become a checkbox exercise).

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Part IV

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0031]

RIN 1904–AE06

Energy Conservation Program: Test Procedure for Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'' or ''the Department'') proposes to amend its test procedure for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units (''Btu/h'') per hour and air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h to incorporate by reference the latest version of the relevant industry test standard. DOE also proposes to adopt the seasonal energy efficiency ratio 2 (''SEER2'') and heating seasonal performance factor 2 (''HSPF2'') metrics specified by that industry test standard in the DOE test procedures for the three-phase equipment that is the subject of this notice of proposed rulemaking (''NOPR''). Additionally, DOE proposes to amend certain provisions for representations and enforcement to harmonize with single-phase products.

DATES:

Meeting: DOE will hold a webinar on Monday, January 10, 2022, from 1:00 p.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this proposal no later than February 7, 2022. See section V, ''Public Participation,'' for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT– TP–0031, by any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Email: AirCooledACHP2017TP0031@ee.doe.gov.* Include the docket number EERE–2017–BT–TP–0031 or regulatory information number (RIN) 1904–AE06 in the subject line of the message.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier, and instead, the Department is only accepting electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *www.regulations.gov/docket?D=EERE-2017-BT-TP-0031.*

The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email:*kristin.koernig@hq.doe.gov.*

For further information on how to submit a comment, review other public comments, and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to maintain and update previously approved incorporations by references for the following industry standards in part 431:

Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 210/240–2008, (''AHRI 210/240–2008''), ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved 2011 and updated by addendum 1 in June 2011 and addendum 2 in March 2012.

American National Standards Institute (''ANSI'')/AHRI Standard 1230–2010, ''ANSI/AHRI 1230–2010''),''2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-split Air-Conditioning and Heat Pump Equipment,'' approved 2010 and updated by addendum 1 in March 2011.

Copies of AHRI 210/240–2008 and ANSI/AHRI 1230–2010 can be obtained from the AHRI website by going to *https://www.ahrinet.org.*

DOE proposes to incorporate by reference the following industry standard into parts 429 and 431:

AHRI Standard 210/240–2023, (''AHRI 210/240–2023''), ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved 2020.

Copies of AHRI 210/240–2023 can be obtained from the AHRI website by going to *https://www.ahrinet.org.*

DOE proposes to amend the previously approved incorporation by reference for the following industry standard in part 431:

American National Standards Institute (''ANSI'')/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009.

Copies of ANSI/ASHRAE Standard 37–2009 can be obtained from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *https://webstore.ansi.org/*.

See section IV.M of this document for further discussion of these standards.

Table of Contents

I. Authority and Background

Small, large, and very large commercial package air conditioning and heating equipment are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) Air-cooled, three-phase, small commercial air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h (''3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h'') [1] and air-cooled, three-phase, variable refrigerant flow (''VRF'' or ''VRF multi-split systems'') air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h (''3-phase VRF with cooling capacity of less than 65,000 Btu/h'') [2] are two separate categories of small commercial package air conditioning and heating equipment. DOE's test procedures and energy conservation standards for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h are currently prescribed at title 10 of the Code of Federal Regulations (''CFR'') part 431. See 10 CFR 431.96 (test procedures) and 10 CFR 431.97 (energy conservation standards). The following sections discuss DOE's authority to establish and amend the test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h, and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[3] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part C [2] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain industrial equipment, including 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h, and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, the subjects of this NOPR. (42 U.S.C. 6311(1)(B))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy efficiency standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) Certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a)–(b); 42 U.S.C. 6297) However, DOE may grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results reflecting the energy efficiency, energy use, and estimated annual operating cost of a given type of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

As discussed, 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h are both categories of small commercial package air conditioning and heating equipment. EPCA requires that the test procedures for small commercial package air conditioning and heating equipment

[1] ACUACs and ACUHPS means air-cooled commercial unitary air conditioners and heat pumps and is terminology consistent with that used for this equipment with a cooling capacity of greater than or equal to 65,000 Btu/h.

[2] As used in this rulemaking, the term ''3-phase VRF with cooling capacity of less than 65,000 Btu/h'' refers only to air-cooled equipment.

[3] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

shall be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (ASHRAE Standard 90.1). (42 U.S.C. 6314(a)(4)(A)) Further, if that industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b))

EPCA also requires that, at least once every 7 years, DOE shall evaluate test procedures for each type of covered equipment, including those addressed in this NOPR, to determine whether amended test procedures would more accurately or fully comply with the requirement that the test procedures not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)) In addition, if DOE determines that a test procedure amendment is warranted, DOE must publish the proposed test procedures in the **Federal Register**, and afford interested persons an opportunity of not less than 45 days to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is publishing this NOPR consistent with its obligations under EPCA.

B. Background

DOE's current test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h are codified at 10 CFR 431.96.

The Federal test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h was last amended on May 16, 2012 to incorporate by reference the ANSI/AHRI Standard 210/240–2008, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved by ANSI on October 27, 2011 and updated by addendum 1 in June 2011 and addendum 2 in March 2012 (''ANSI/AHRI 210/240–2008''). 77 FR 28928 (''May 2012 final rule''). The May 2012 final rule also established additional testing requirements at 10 CFR 431.96(c) and (e) that provide an optional break-in period for testing and specifications regarding the use of manufacturer instructions in set-up, respectively, applicable to measuring seasonal energy efficiency ratio (''SEER'') and heating seasonal performance factor (''HSPF'') for this equipment. 77 FR 28928, 28991 (May 16, 2012).

The Federal test procedure for 3-phase VRF with cooling capacity of less than 65,000 Btu/h was also last amended in the May 2012 final rule, and incorporated by reference ANSI/AHRI Standard 1230–2010, ''*2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,*'' approved August 2, 2010 and updated by addendum 1 in March 2011 (''AHRI 1230–2010''). The testing requirements at 10 CFR 431.96(c) and (e) also apply to VRF multi-split systems. Additionally, the May 2012 final rule established additional testing requirements at 10 CFR 431.96(d) and (f) that provide for refrigerant line length corrections for tests conducted using AHRI 1230–2010, and for manufacturer involvement in assessment or enforcement testing for VRF multi-split systems, respectively. 77 FR 28928, 28991 (May 16, 2012).

In 2017, AHRI published an updated version of its standard, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment'' (''AHRI 210/240–2017''). That updated testing standard made a number of changes that are relevant to DOE's current test procedure, and many of these changes were based on DOE's current test procedure for single-phase central air conditioners and central air conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h (*i.e.,* 10 CFR part 430, subpart B, appendix M, ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps''; ''Appendix M'').[4]

Following the publication of AHRI 210/240–2017, on October 2, 2018, DOE published in the **Federal Register** a request for information (''RFI'') seeking comments on whether DOE should align its test procedure (and certification and enforcement requirements) for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h with that for air-cooled, single-phase, central air conditioners and central air conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h, consistent with the update to AHRI 210/240–2017. 83 FR 49501 (''October 2018 RFI'').

DOE received comments in response to the October 2018 RFI from the interested parties listed in Table I.I.

TABLE I.I—INTERESTED PARTIES PROVIDING WRITTEN COMMENTS TO THE OCTOBER 2018 RFI

Organization(s)	Reference in this NOPR	Organization type
Air-Conditioning Heating and Refrigeration Institute	AHRI	Trade Association.
Pacific Gas and Electric Company (''PG&E''), San Diego Gas, and Electric (''SDG&E''), and Southern California Edison (''SCE'').	CA IOUs	Utilities.
Goodman Global, Inc	Goodman	Manufacturer.
Ingersoll Rand	Ingersoll Rand	Manufacturer.
Lennox International Inc	Lennox	Manufacturer.
Natural Resources Defense Council (''NRDC''), and Appliance Standards Awareness Project (''ASAP'').	NRDC and ASAP	Energy Efficiency Advocates.
United Technologies Corporation (submitted by Carrier Corporation)	Carrier	Manufacturer.

[4] Three-phase equipment models generally are identical physically to their single-phase, residential counterparts, except for the electrical systems and components designed for three-phase power input.

Throughout this document, a parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

In April 2019, AHRI published the ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment (with Addendum 1)'' (''AHRI 210/240–2017 with Addendum 1''), which incorporated minor revisions to definitions, testing requirements, and efficiency calculations.

On October 23, 2019, ASHRAE released ASHRAE Standard 90.1–2019, which maintained the reference to AHRI 210/240 as the industry testing standard for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h, but updated the editions referenced. ASHRAE Standard 90.1–2019 references AHRI 210/240–2017 for the period prior to January 1, 2023. For the period beginning January 1, 2023, ASHRAE Standard 90.1–2019 references AHRI 210/240–2023 (to align with ASHRAE Standard 90.1–2019 minimum efficiency levels for this equipment in terms of SEER2 and HSPF2 that take effect on January 1, 2023). ASHRAE Standard 90.1–2019 maintained the reference to AHRI 1230 as the industry testing standard for all VRF multi-split systems, including air-cooled, three-phase units with a cooling capacity of less than 65,000 Btu/h, with an update to AHRI 1230–2014 with Addendum 1.[6]

In May 2020, AHRI published AHRI 210/240–2023. The updates in AHRI 210/240–2017, AHRI 210/240–2017 with Addendum 1, and AHRI 210/240–2023 are discussed in section III.E.2 of this NOPR. DOE has reviewed the comments from the October 2018 RFI in the context of these updated industry standards.

In May 2021, AHRI published AHRI 1230–2021, which excludes from its scope air-cooled, VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h. Both AHRI 210/240–2017 with Addendum 1 and AHRI 210/240–2023 exclude from their scope only VRF multi-split systems that have capacities greater than or equal to 65,000 Btu/h. Because AHRI 1230–2021 explicitly excludes VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h from scope, and the scope exclusion in AHRI 210/240–2023 applies only to VRF multi-split systems with a cooling capacity of 65,000 Btu/h or greater, VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h are included within the scope of AHRI 210/240–2023.

As such, DOE has tentatively determined that AHRI 210/240–2023 is now the appropriate industry test standard for 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Three-phase VRF with cooling capacity of less than 65,000 Btu/h do not currently exist on the market, but DOE expects that any such equipment introduced to the market in the future would likely be identical to air-cooled, single-phase, VRF multi-split systems (except for the components designed for three-phase power input). Therefore, DOE has tentatively determined that it is appropriate to align its proposed test procedure for 3-phase VRF with cooling capacity of less than 65,000 Btu/h (AHRI 210/240–2023) with the test procedure for their single-phase counterparts (*i.e.,* 10 CFR part 430, subpart B, appendix M1; (''Appendix M1'')). For these reasons, DOE is addressing the test procedures for this equipment in this NOPR.

II. Synopsis of the Notice of Proposed Rulemaking

This NOPR proposes to update the references in the Federal test procedures to the most recent version of the relevant industry test procedures as they relate to 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Specifically, DOE proposes to update its regulations at 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' as follows: (1) Incorporate by reference AHRI 210/240–2023 and ANSI/ASHRAE 37–2009 ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (''ANSI/ASHRAE 37–2009''); and (2) establish provisions for determining SEER2 and HSPF2. The current DOE test procedures for all equipment addressed in this NOPR would be relocated to a new appendix B of subpart F to 10 CFR part 431 (''Appendix B'') without change, and the new test procedure adopting AHRI 210/240–2023 would be established in a new appendix B1 of subpart F to 10 CFR part 431 (''Appendix B1'') for determining SEER2 and HSPF2. Compliance with appendix B1 would not be required until such time as compliance is required with amended energy conservation standards that rely on SEER2 and HSPF2, should DOE adopt such standards. Compliance with appendix B (which aligns with the current Federal test procedure) would be required beginning 360 days following publication of the final rule. Prior to the date 360 days following publication of the final rule, testing would be required to be conducted either per appendix B or under 10 CFR 431.96 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

In addition, DOE proposes to update most of its compliance and enforcement requirements for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h to be consistent with those for the consumer product counterparts (*i.e.,* air-cooled, single-phase, central air conditioners and central air conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h (which include single-phase VRF multi-split systems)).

DOE's proposed actions are summarized in Table II.2 and addressed in detail in section III of this document.

TABLE II.2—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedures	Proposed amendment	Reason
Incorporates by reference ANSI/AHRI 210/240–2008 (for equipment other than VRF multi-split systems) and ANSI/AHRI 1230–2010 for VRF multi-split systems.	Incorporates by reference in a new appendix B1 AHRI 210/240–2023 and ANSI/ASHRAE 37–2009.	EPCA requirement to harmonize with industry test procedure.

[5] The parenthetical reference provides a reference for information located in the docket of this rulemaking. (Docket No. EERE–2017–BT–TP–0031, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[6] Air-cooled, three-phase, VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h are not excluded from the scope of either AHRI 210/240 (2017 and 2023) or AHRI 1230–2014 with Addendum 1.

TABLE II.2—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE—Continued

Current DOE test procedures	Proposed amendment	Reason
Applicable representation requirements are those specified at 10 CFR 429.43 and 10 CFR 429.70 for commercial heating, ventilating, and air conditioning (''HVAC'') equipment.	Amends representation requirements at new 10 CFR 429.64 and 10 CFR 429.70—including basic model definition, tested combination, determination of represented value, and alternative energy determination method (''AEDM'') requirements—largely consistent with requirements for single-phase consumer product counterparts. Amended representation requirements allow the use of an AEDM that is validated with testing of an otherwise identical single-phase central air conditioners and heat pumps for rating three-phase, less than 65,000 Btu/h single package units and split systems.	Harmonization with single-phase consumer product counterparts, and reduction of testing burden on manufacturers.

DOE has tentatively determined that the proposed amendments described in section III of this NOPR regarding the establishment of appendix B would not alter the measured efficiency of equipment addressed in this document or require retesting solely as a result of DOE's adoption of this proposed amendment to the test procedure. DOE has tentatively determined, however, that the proposed test procedure amendments in appendix B1 would, if adopted, alter the measured efficiency of the affected equipment and that such amendments are consistent with the updated industry test procedure. Further, compliance with the proposed appendix B1 and the proposed amendments to the representation requirements in 10 CFR 429.43 and 10 CFR 429.70 would not be required until the compliance date of amended standards in terms of SEER2 and HSPF2. Additionally, DOE has tentatively determined that the proposed amendments, if adopted, would not increase the cost of testing relative to the updated industry test procedure. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

The discussion that follows details the specific changes that DOE is proposing to make to the current test procedure regulations affecting 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h.

A. Scope of Applicability

Three-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h are both categories of small commercial package air conditioning and heating equipment. Commercial package air-conditioning and heating equipment may be air-cooled, water-cooled, evaporatively-cooled, or water source-based (not including ground water source). These equipment are electrically-operated and are designed as unitary central air conditioners or central air-conditioning heat pumps for use in commercial applications. 10 CFR 431.92. As discussed in the following sections, 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h are typically nearly identical (and therefore typically have comparable efficiency) to single-phase central air conditioners and central air conditioning heat pumps with rated cooling capacities of less than 65,000 Btu/h, the latter being consumer products also subject to EPCA and for which DOE has already established energy conservation standards (10 CFR 430.32(c)) and test procedures (appendix M and appendix M1). Based on this ''nearly identical'' relationship, while 3-phase VRF with cooling capacity of less than 65,000 Btu/h do not currently exist on the market, DOE expects that any such equipment introduced to the market in the future would likely also be identical (except for the components designed for three-phase power input) to their single-phase counterparts, which are a subset of single-phase central air conditioners and central air conditioning heat pumps, and, as such, are also rated using appendix M and appendix M1.

Three-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h are further disaggregated into four equipment classes: Single-package air conditioners, single-package heat pumps, split-system air conditioners, and split-system heat pumps. 10 CFR 431.97(b).[7] This NOPR proposes to amend the test procedure applicable to all four equipment classes but without amending its current scope. Three-phase VRF with cooling capacity of less than 65,000 Btu/h are further disaggregated into two equipment classes: air conditioners and heat pumps. 10 CFR 431.97(f). This NOPR proposes to amend the test procedure applicable to both equipment classes but without amending its current scope.

B. Metrics

As noted, for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h, the cooling metric and heating metric currently specified by DOE are the SEER metric and the HSPF metric, respectively. 10 CFR 431.96. SEER is a seasonal efficiency metric that accounts for electricity consumption in active and standby cooling modes during the cooling season, while HSPF is a seasonal efficiency metric that accounts for electricity consumption in active and standby heating modes for heat pumps during the heating season. These are the same metrics that currently apply to single-phase central air conditioners and central air conditioning heat pumps, including single-phase, air-cooled VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h (see appendix M).

C. Proposed Organization of the Test Procedure

DOE is proposing to relocate and centralize the current test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h to a new appendix B to subpart F of part 431. As proposed, appendix B would

[7] The term ''single package unit'' means ''any central air conditioner or central air-conditioning heat pump in which all the major assemblies are enclosed in one cabinet.'' The term ''split system'' means ''any central air conditioner or central air-conditioning heat pump in which one or more of the major assemblies are separate from the others.'' 10 CFR 431.92.

not amend the current test procedures. The test procedures as provided in the proposed appendix B would continue to reference ANSI/AHRI 210/240–2008 and ANSI/AHRI 1230–2010 and provide instructions for determining SEER and HSPF. DOE is proposing to also update the existing incorporation by reference of ANSI/AHRI 210/240–2008 and ANSI/AHRI 1230–2010 at 10 CFR 431.95 to apply it to appendix B. The proposed appendix B would also centralize the additional test provisions currently applicable under 10 CFR 431.96, *i.e.,* 10 CFR 431.96(c) through (f). As proposed, the three-phase equipment addressed in this document would be required to be tested according to appendix B until such time as compliance is required with amended energy conservation standards that rely on the SEER2 and HSPF2 metrics, should DOE adopt such standards.

DOE is also proposing to amend the test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h by adopting AHRI 210/240–2023 in a new appendix B1 to subpart F of part 431. As noted, EPCA requires DOE to amend the test procedure as necessary to be consistent with the amended industry test procedure unless it determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the statutory requirements for test procedures regarding representativeness and no undue test burden. DOE proposes to adopt the updated version of AHRI 210/240, *i.e.,* AHRI 210/240–2023, including the SEER2 and HSPF2 metrics. As proposed, the three-phase equipment addressed in this NOPR would not be required to be tested using the test procedure in proposed Appendix B1 until such time as compliance is required with amended energy conservation standards that rely on the SEER2 and HSPF2 metrics, should DOE adopt such standards.

D. Updates to the Federal Test Method for Central Air Conditioners and Heat Pumps

On June 8, 2016, DOE published a test procedure final rule amending appendix M. 81 FR 36992 (''June 2016 final rule'').[8] DOE further amended appendix M in a final rule, published on January 5, 2017, to improve test repeatability, reduce testing burden, and improve the accuracy of field representativeness of the testing values without impacting the measured energy consumption. 82 FR 1426 (''January 2017 final rule'').

The January 2017 final rule also included other changes to improve test repeatability, reduce testing burden, and improve the accuracy of field representativeness that would impact the results of the test procedure. DOE established a separate appendix M1 incorporating these changes and new metrics to avoid confusion with the metrics under appendix M. Appendix M1 specifies new efficiency metrics SEER2, energy efficiency ratio 2 (''EER2''), and HSPF2 that have the same definitions as their counterpart metrics in appendix M (*i.e.,* SEER, EER, and HSPF) but reflect the amendments made to the test procedure in Appendix M1, which change the measured efficiency values compared to Appendix M. (See 82 FR 1426, 1437 (Jan. 5, 2017) explaining DOE's decision to adopt the new metrics SEER2, EER2, and HSPF2). Beginning on January 1, 2023, efficiency representations for single-phase central air conditioners and central air conditioning heat pumps with rated cooling capacities of less than 65,000 Btu/h must be based on the test procedure in appendix M1. 82 FR 1426.

Both appendices M and M1 reference ANSI/AHRI 210/240–2008, sections 6.1.3.2, 6.1.3.4, 6.1.3.5 and figures D1, D2, D4, along with sections of ANSI/AHRI 1230–2010 (related to VRF multi-split systems), ANSI/ASHRAE 23.1–2010, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ANSI/ASHRAE 41.2–1987 (RA 1992), ANSI/ASHRAE 41.6–2014, ANSI/ASHRAE 41.9–2011, ANSI/ASHRAE 116–2010, and ANSI/AMCA 210–2007.

Additionally, both the June 2016 final rule and January 2017 final rule adopted amendments related to the certification, compliance, and enforcement of single-phase central air conditioners and central air conditioning heat pumps with rated cooling capacities of less than 65,000 Btu/h, codified in 10 CFR part 429. *See generally,* 81 FR 36992, 37049–37055 (June 8, 2016) and 82 FR 1426, 1468–1475 (Jan. 5, 2017). The amendments included revisions to the basic model definition, clarifications to definitions, and a variety of revisions related to the testing requirements for determining represented values, certification reporting requirements, and product-specific enforcement provisions. *Id.*

E. Updates to Industry Standards and Proposed Test Procedures for Three-Phase Equipment With Cooling Capacity of Less Than 65,000 Btu/h

As noted, the current DOE test procedure at 10 CFR 431.96 for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h incorporates by reference ANSI/AHRI Standard 210/240–2008 with Addenda 1 and 2 (''ANSI/AHRI 210/240–2008,'' but omitting section 6.5). ANSI/AHRI 210/240–2008 includes as appendix C (which is designated as normative in the industry test standard) [9] the entirety of the text of appendix M as amended by a final rule published on October 22, 2007 (72 FR 59906). Appendix M provides the Federal test procedure for determining the efficiency of single-phase central air conditioners and central air conditioning heat pumps with rated cooling capacities of less than 65,000 Btu/h, which are consumer products covered under 10 CFR part 430.

The current DOE test procedure at 10 CFR 431.96 for 3-phase VRF with cooling capacity of less than 65,000 Btu/h incorporates by reference ANSI/AHRI Standard 1230–2010 with Addendum 1 (''ANSI/AHRI 1230–2010'', omitting sections 5.1.2 and 6.6).

As noted previously in this document, AHRI has recently published several updated industry standards: AHRI 210/240–2017 (published in December 2017), AHRI 210/240–2017 with Addendum 1 (published in April 2019), and AHRI 210/240–2023 (published in May 2020). DOE has reviewed these documents in the development of this NOPR. In addition, AHRI has recently published AHRI 1230–2021 (published in May 2021).

As discussed in the following sections, DOE is proposing to incorporate by reference AHRI 210/240–2023 as the test procedure for the three-phase equipment addressed in this document. As proposed, manufacturers would not be required to rely on the amended test procedure incorporating AHRI 210/240–2023 until such time as compliance is required with amended standards in terms of the new metrics, SEER2 and HSPF2, should DOE adopt such energy conservation standards. This proposed test procedure update would align with the test procedure and metrics for central air conditioners and heat pumps specified at appendix M1. DOE is also proposing to incorporate by reference ANSI/ASHRAE 37–2009, which is referenced by AHRI 210/240–2023.

1. Harmonization With Single-Phase Products

In the October 2018 RFI, DOE stated that the three-phase equipment at issue

[8] A correction was issued on August 18, 2016, to fix editorial errors. 81 FR 55111.

[9] The inclusion of appendix M in a normative appendix means that appendix M was required to be followed when testing in accordance with ANSI/AHRI 210/240–2008.

is often nearly identical to their single-phase counterparts. 83 FR 49501, 49504 (Oct. 2, 2018). Specifically, three-phase models generally are manufactured on the same production lines and are physically identical to their corresponding single-phase central air conditioner and central air conditioning heat pump models except the former have three-phase electrical systems and use components, primarily motors and compressors, that are designed for three-phase power input. *Id.* Other key operational components, such as heat exchangers and fans (excluding fan motors), are typically identical for three-phase and single-phase designs of a given model family. *Id.* In addition, most manufacturers' model numbers for single-phase products and three-phase equipment are interchangeable, and three-phase and single-phase versions of the same model have the same energy efficiency ratings. *See, e.g.,* 80 FR 42614, 42622 (July 17, 2015), and 83 FR 49501, 49504 (Oct. 2, 2018).

The October 2018 RFI raised the question of whether DOE should align its test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h with the test procedure for single-phase central air conditioners and central air conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h. DOE requested comments and information on the merits of referencing the current version of appendix M, or some portion thereof, for the three-phase systems at issue versus the merits of referencing the updated AHRI 210/240–2017, which reflects the updated appendix M. 83 FR 49501, 49504 (Oct. 2, 2018).

DOE notes that the October 2018 RFI did not discuss 3-phase VRF with cooling capacity of less than 65,000 Btu/h, as AHRI had not updated the scope of its industry standards for this equipment at that time. As previously noted in this document, this equipment does not currently exist on the market; however, DOE expects that any such equipment introduced to the market in the future would—for the same reasons discussed earlier—presumably be nearly identical to its single-phase counterparts, which are a subset of single-phase central air conditioners and central air conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h.

In response to the October 2018 RFI, all commenters supported harmonizing the test procedures for both 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h, and single-phase central air conditioners and central air conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h.[10] (CA IOUs, No. 2 at pp. 1–2; Ingersoll Rand, No. 3 at p. 2; AHRI, No. 4 at pp. 1–2; NRDC and ASAP, No. 5 at pp. 1–2; Lennox, No. 6 at pp. 1–2; Carrier, No. 7 at p. 1; Goodman, No. 8 at pp. 1–3) Specifically, AHRI, Lennox, Carrier, and Goodman supported harmonizing the two test procedures by referencing the industry standard. (AHRI, No. 4 at p. 2; Lennox, No. 6 at pp. 1–2; Carrier, No. 7 at p. 1; Goodman, No. 8 at p. 2) Lennox noted that EPCA requires that the test procedure for this equipment be those generally accepted industry test procedures. (Lennox, No. 6 at p. 1) Others, however, suggested that DOE harmonize the two test procedures by adopting appendix M. (CA IOUs, No. 2 at p. 2; NRDC and ASAP, No. 5 at pp. 1–2) CA IOUs suggested that DOE reference DOE's own regulatory text, and NRDC and ASAP preferred this approach to ensure consistency and transparency. (CA IOUs, No. 2 at p. 2; NRDC and ASAP, No. 5 at p. 2) Ingersoll Rand agreed that harmonization of the test procedures is advantageous and reduces burden, but did not specify which test procedure DOE should reference. (Ingersoll Rand, No. 3 at p. 2)

Beginning January 1, 2023, Appendix M1 specifies that single-phase central air conditioners and central air conditioning heat pumps must be tested according to appendix M1. The version of AHRI 210/240 available at the time of the October 2018 RFI publication, AHRI 210/240–2017, does not contain updates to account for the more recent changes contained in appendix M1. DOE noted in the October 2018 RFI that AHRI intended to address appendix M1, by revising AHRI 210/240–2017. In the October 2018 RFI, DOE requested comment on the appropriateness of testing 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h according to appendix M1. 83 FR 49501, 49504–49505 (Oct. 2, 2018).

Carrier, Goodman, and AHRI urged DOE to wait until AHRI finishes updating AHRI 210/240 to reference the version that would include both appendix M1 and appendix M. (Carrier, No. 7 at p. 2; Goodman, No. 8 at pp. 1–2; AHRI, No. 4 at p. 2) The CA IOUs supported several changes that were made as part of appendix M1, including changes to the coil-only test, new external duct static pressure ratings, and the heating load line increase for heat pump HSPF tests. (CA IOUs, No. 2 at p. 2) The CA IOUs stated that by including these changes that were made to appendix M1, three-phase equipment should be subject to the same requirements as single-phase equipment. (*Id.*) NRDC and ASAP supported adopting appendix M1 for three-phase equipment and noted that applying appendix M1 in the future along with revised standards will maximize consistency and minimize testing burden. (NRDC and ASAP, No. 5 at p. 2) Lennox agreed with DOE that if DOE adopts the AHRI procedure, it would not conflict with appendix M or appendix M1 and would be highly unlikely to impact measured efficiency as compared to appendix M. (Lennox, No. 6 at p. 2)

DOE is proposing to align the test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h with the test procedure at appendix M1 for central air conditioners, by adopting AHRI 210/240–2023. As discussed in section III.E.2.b of this NOPR, AHRI 210/240–2023 harmonizes with the updated Federal test method for single-phase central air conditioners and central air conditioning heat pumps (*i.e.,* appendix M1).

DOE also considered whether to harmonize the current test procedures for the three-phase equipment addressed in this document with appendix M. However, the required 360-day compliance lead-time period for test procedure final rules for ASHRAE equipment specified in EPCA (42 U.S.C. 6314(d)(1)) would result in little to no time between the compliance date of the final rule for this test procedure rulemaking and January 1, 2023—when appendix M1 is required for testing central air conditioners and heat pumps (and when appendix M will no longer be used). Therefore, DOE has tentatively concluded that there would be little practical benefit to harmonizing the test procedures for the three phase-equipment addressed in this document with the current test procedures for central air conditioners and heat pumps at appendix M. Further, as described in the following sub-sections, DOE has identified errors in AHRI 210/240–2017 with Addendum 1 that DOE has tentatively determined would need to be corrected in regulatory text, if DOE adopted AHRI 210/240–2017 with Addendum 1.

In the October 2018 RFI, DOE solicited comment on any other aspect of its current test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h. 83 FR 49501, 49505 (Oct. 2, 2018). The CA IOUs and NRDC and ASAP

[10] All comments are available at *www.regulations.gov,* in Docket No. EERE–2017–BT–TP–0031.

recommended that DOE begin developing a dynamic load-based test procedure for both three-phase and single-phase equipment for the next rulemaking cycle. (CA IOUs, No. 2 at p. 3; NRDC and ASAP, No. 5 at p. 2) These commenters noted that work on a Canadian Standards Association Express Document (''CSA EXP07'') has begun the development of a dynamic, load-based test procedure, and that DOE should start investigating a dynamic, load-based test, similar to the test procedure being developed by the CSA Group (CSA EXP07 Public Review Draft/September 2017). (CA IOUs, No. 2 at p. 3; NRDC and ASAP, No. 5 at p. 2). DOE notes that it is reviewing documents from the CSA EXP07 development process (*e.g.,* the public review draft and the more recently published ''Express Document'' CSA EXP07:19) and participating in stakeholder efforts, such as the Next Generation Test Method working group (convened by the American Council for an Energy-Efficient Economy), to evaluate load-based, dynamic test methods.[11]

2. AHRI 210/240

a. AHRI 210/240–2017 and AHRI 210/240–2017 With Addendum 1

Many of the revisions in AHRI 210/240–2017 are intended to harmonize the industry test procedure with the updated Federal test method for single-phase central air conditioners and central air conditioning heat pumps with rated cooling capacities of less than 65,000 Btu/h (*i.e.,* appendix M). AHRI 210/240–2017 does not contain the text of appendix M in a normative appendix (as is the case in Appendix C of ANSI/AHRI 210/240–2008) and instead integrates requirements consistent with appendix M throughout the standard.[12] AHRI 210/240–2017 also includes additional updates beyond integrating the revised appendix M.[13]

AHRI 210/240–2017 with Addendum 1 includes further updates. These include: Additional and revised definitions (Section 3); new provisions regarding multi-split systems, oil recovery, and refrigerant line length correction factors (Section 5); specified tolerances and tests required for different product types provided in Table 7 and Table 8 (Section 6); specified distinctions for total, net, cooling, and heating capacity (Sections 7, 11, 12, and Appendix C) along with multiple calculation updates (Section 11); revised testing requirements for systems with a cooling expansion device in the outdoor unit (Appendix D); reduction in the nominal overall resistance (*i.e.,* R-value) of the thermal insulation for indoor coil inlet and outlet duct connections and inclusion of provisions for sampling devices and dew-point hygrometers (Appendix E); and a new appendix that refers to forthcoming changes to the industry standard to address the test procedure in appendix M1 (Appendix K).

While DOE understands that AHRI 210/240–2017 and AHRI 210/240–2017 with Addendum 1 were intended to harmonize with the Federal test procedure for central air conditioners and heat pumps (appendix M), DOE has identified errors and substantive differences from appendix M in both industry test standards. Specifically, DOE has identified the following issues:

- In Section 11 (''Calculations'') of AHRI 210/240–2017 with Addendum 1: (1) Multiple formulas have typographical errors; [14] (2) multiple formulas are inapplicable; [15] and (3) the section does not include any specification for the calculation of efficiency metrics for certain equipment subtypes: Units with variable-air-volume fans; multiple-indoor blowers; and Northern triple-capacity heat pumps (this issue is also present in AHRI 210/240–2017).
- In Section 5 (''Test Requirements''), in Appendix D (''Secondary Capacity Check Requirements—Normative''), and in Appendix E (''ANSI/ASHRAE Standard 37 Clarifications/Exceptions'') of AHRI 210/240–2017 with Addendum 1, there are multiple inconsistencies with appendix M (many of which are also present in AHRI 210/240–2017), such as the following: (1) Section 5 references the wrong table for testing tolerances for cyclic testing (*i.e.,* references ''Table 11'' in Section 5.2.4 Cycle Stability Requirements, rather than Table 3b of ASHRAE Standard 116); and (2) Section D7.6.4 specifies more burdensome condition tolerances than appendix M for the ''Closed Duct test'' of the outdoor air enthalpy method.[16]

As noted, EPCA requires that the test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h be the generally accepted industry testing procedure developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, when the industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

DOE tentatively determines that significant deviations in regulatory text would be needed to correct errors in the referenced industry test standard (*e.g.,* correcting and adding certain formulas, correcting test tolerances for cyclic testing) if AHRI 210/240–2017 or AHRI 210/240–2017 with Addendum 1 were to be adopted in the Federal test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h. Additionally, without further deviations in the regulatory text, testing to AHRI 210/240–2017 or AHRI 210/240–2017 with Addendum 1 would still not align with appendix M, because, as discussed, there are discrepancies between the industry test standards and appendix M.

Further, as discussed, there would be minimal, if any, practical benefit from

[11] A dynamic load-based test method differs from the steady-state test method currently used in DOE test procedures for air conditioning and heat pump equipment. In a steady-state test method, the indoor room is maintained at a constant temperature throughout the test. In this type of test, any variable-speed or variable-position components of air conditioners and heat pumps are set in a fixed position, which is typically specified by the manufacturer. In contrast, a dynamic load-based test has the conditioning load applied to the indoor room using a load profile that approximates how the load varies for units installed in the field. In this type of test, an air conditioning system or heat pump is allowed to automatically determine and vary its control settings in response to the imposed conditioning loads, rather than relying on manufacturer-specified settings.

[12] For example, AHRI 210/240–2017 includes an updated table of required tests (Table 7), as well as provisions related to off-mode power.

[13] For example, AHRI 210/240–2017 has stricter requirements for heat balance and charge weight tolerance than appendix M. AHRI 210/240–2017 also includes a detailed calculation section that is based on ANSI/ASHRAE 37 and ANSI/ASHRAE 116.

[14] For example, in Equation 11.64 in Section 11.2.1.2 of AHRI 210/240–2017 with Addendum 1, the denominator of the second term (enclosed in braces) should read ''95–82'' instead of ''95–8''.

[15] For example, Equation 11.187 in Section 11.2.2.3 of AHRI 210/240–2017 with Addendum 1 is not applicable, given that linear interpolation is used to determine COP at intermediate compressor speed for units with a variable-speed compressor.

[16] Section D7.6.4 of AHRI 210/240–2017 with Addendum 1 specifies condition tolerances for indoor and outdoor entering air dry-bulb and wet-bulb tolerances (the target temperature for each is the average value measure during the free air test (''FA'') test). For each of these temperatures, the tolerance specified in Section D7.6.4 is half the condition tolerance specified in Table 9 of appendix M (*e.g.,* for indoor entering dry-bulb temperature, Table 9 of appendix M specifies a condition tolerance of 0.5 °F, while Section 7.6.4.1 specifies a condition tolerance of 0.25 °F).

harmonizing the test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h with the test procedure for single-phase products at appendix M, given that the applicability of appendix M for determining compliance of central air conditioners will end January 1, 2023, and it is unlikely that a compliance date for a final rule for this rulemaking, which would be 360 days after final rule publication if a final rule is issued, would precede January 1, 2023 by any significant amount of time.

For these reasons, DOE has tentatively concluded that adopting a revised test procedure (*i.e.,* referencing AHRI 210/240–2017 or AHRI 210/240–2017 with Addendum 1, along with the substantive corrections and deviations that would be required) for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h would be unduly burdensome to manufacturers. DOE considers the reasoning discussed in the paragraphs above to constitute clear and convincing evidence that adopting AHRI 210/240–2017 or AHRI 210/240–2017 with Addendum 1 would not meet the requirements specified in 42 U.S.C. 6314(a)(2).

As such, DOE proposes to maintain the current test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h, which incorporates by reference ANSI/AHRI 210/240–2008, until such time as compliance with the amended test procedure referencing AHRI 210/240–2023 would be required.

Issue 1: DOE seeks comment on its proposal to maintain reference to ANSI/AHRI 210/240–2008 with Addenda 1 and 2 as the Federal test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h, until such time as compliance would be required with the amended test procedure referencing AHRI 210/240–2023.

b. AHRI 210/240–2023

DOE notes that AHRI 210/240–2023 generally corrects the errors in AHRI 210/240–2017 with Addendum 1 and harmonizes with the updated Federal test method for single-phase central air conditioners and central air conditioning heat pumps with rated cooling capacities of less than 65,000 Btu/h (*i.e.,* appendix M1, effective January 1, 2023), which includes single-phase, air-cooled, VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h. The industry standard updates the performance metrics to EER2, SEER2 and HSPF2. Significant changes related to the new efficiency metrics include higher minimum external static pressure (''ESP'') requirements for conventional systems (Table 10) and changes in the building heating load line for HSPF2 (Section 11). Additional changes in AHRI 210/240–2023 to align with appendix M1 include the addition of: (1) Minimum ESP requirements in Table 10 for varieties of ducted blower systems specified in appendix M1 (*i.e.,* ceiling- and wall-mount, mobile home, and low/mid static); (2) a separate unit configuration of single stage system with a single variable-speed variable-air-volume blower or multiple indoor blowers in Table 7; and (3) the optional H4 test (*i.e.,* the full-load heating test at 5 °F ambient temperature) in Table 7. These changes apply for testing of both 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h.

In addition, AHRI 210/240–2023 reflects and is consistent with DOE's appendix M1, which will be the required test procedure for single-phase central air conditioners and central air conditioning heat pumps with capacities of less than 65,000 Btu/h beginning January 1, 2023. No commenters suggested that the test procedure in appendix M1 would be inappropriate for the testing of three-phase equipment.

As discussed, the updates contained in AHRI 210/240–2023 provide for measuring energy efficiency using the SEER2 and HSPF2 metrics, which are the metrics adopted by ASHRAE Standard 90.1–2019 for the 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h standards beginning January 1, 2023.[17] In response to this update to AHRI 210/240, DOE proposes to incorporate AHRI 210/240–2023 as the test procedure with which representations must be made beginning with the compliance date of any amended DOE standards for three-phase equipment relying on SEER2 and HSPF2 as the metrics.[18]

Harmonization of the test procedures would provide for more comparable information between three-phase equipment and single-phase products. Commercial customers considering either single-phase or three-phase equipment would have ratings for both sets of equipment that are based on identical testing requirements when evaluating product options. Because AHRI 210/240–2023 aligns with appendix M1, the proposed incorporation of this industry testing procedure for the three-phase equipment at issue would produce comparable ratings between single-phase and three-phase equipment (as discussed in section III.E.1 of this NOPR). Consequently, DOE has tentatively concluded that this proposed test procedure would not be unduly burdensome to conduct.

Only certain sections of AHRI 210/240–2023 apply to the DOE test procedures for the three-phase equipment that is the subject of this NOPR. Therefore, DOE is proposing to reference AHRI 210/240–2023 in the proposed test procedure at appendix B1 except for the following sections:

- Section 6—Rating Requirements (these provisions are not related to the method of test and DOE separately addresses these topics in 10 CFR part 429):
  - Sections 6.1.8, 6.4.1, 6.4.2, 6.4.3, 6.4.4 (minimum testing and certification requirements);
  - Sections 6.2 and 6.4.6 (permit a given product to have multiple ratings of different values);
  - Section 6.5 (uncertainty allowances for testing, which are not relevant to the Federal test procedure);
- Sections 7 through 10, Appendix C, and Appendix I (these are relevant only to AHRI's certification program);
- Appendix F: Sections F15.2 and F17 (these pertain to electrical measurements and cyclic tolerances, respectively; DOE proposes modifications as discussed in the following paragraphs);
- Appendix G (pertains to configuration of the unit under test, discussed in the following paragraphs);
- Appendix H (pertains to Off-Mode testing, which is not required by DOE for three-phase equipment).

Regarding energy measurement provisions, section 2.8 of appendix M requires that the watt-hour (*i.e.,* ''W·h'', also referred to as ''integrated power'' or ''energy'') measuring system give readings that are accurate to within ±0.5 percent. In response to the October 2018 RFI, Carrier recommended that section 2.8.a of appendix M be revised to include a lower limit (*i.e.,* ''greater of 0.5 percent of reading or 0.5 watts''), stating that, without a lower limit, compliance

[17] ASHRAE 90.1–2019 did not update the metrics for air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h. Those metrics remain SEER and HSPF in ASHRAE Standard 90.1.

[18] The timing and implementation of any amended standards may be different for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and for air-cooled, three-phase variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h, depending on DOE rulemaking related to energy conservation standards for those separate categories of equipment.

with this requirement at times of low power (*e.g.,* during an OFF cycle) can be difficult for single-phase equipment and possibly unrealistic for three-phase equipment. (Carrier, No. 7 at p. 2) Section F15.2 of AHRI 210/240–2023 addresses Carrier's concern by adding a lower limit, stating that the ''watt-hour measurement system shall be accurate within ±0.5 percent or 0.5 W/h, whichever is greater''. However, Section F15.2 of AHRI 210/240–2023 specifies incorrect units of measurement and should refer to watt hours (W·h) (consistent with the first words of Section F15.2) rather than to ''W/h''. Therefore, DOE proposes not to reference Section F15.2, and instead to adopt similar provisions in section 3 of appendix B1 that correct the units of measurement to W·h.

Regarding cyclic test tolerances, Section F17 of AHRI 210/240–2023 appears to incorrectly reference ASHRAE 37 Table 2b for cyclic test operating and condition tolerances. ASHRAE 37 Table 2b does not specify tolerances specific to cyclic testing. Instead, as specified in footnote 1 to Table 8 of AHRI 210/240–2023, the tolerances in ASHRAE Standard 116 Table 3b (titled ''Test Tolerances for Cyclic Performance Tests'') should be used for cyclic testing. Therefore, DOE proposes not to reference Section F17, and instead to adopt similar provisions in section 4 of appendix B1 that do not reference ASHRAE 37 test tolerances.

Regarding Appendix G, currently enforcement testing of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h falls under DOE's Commercial HVAC Enforcement Policy,[19] which outlines how certain features of this equipment will be treated for compliance testing. In Appendix G of AHRI 210/240–2023, AHRI included a list of components that must be present for testing (Section G1.2) and a list of features that are optional for testing (Section G2), which provides additional instruction to address certain of these features and additional details that are beyond the scope of the current Commercial HVAC Enforcement Policy. Also, there are five features [20] that are included in the Commercial HVAC Enforcement Policy for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h that are not included in Section G2 of AHRI 210/240–2023.

DOE has reviewed the market for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h in connection with the specific treatment of components and optional features suggested in Appendix G of AHRI 210/240–2023. DOE found that certain optional features listed in Section G2 (as well as certain features that are included in DOE's current Commercial HVAC Enforcement Policy but not included in Section G2 of AHRI 210/240–2023) are present in models of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h. However, these same features are also present in models of single-phase central air conditioners and central air conditioning heat pumps with cooling capacity of less than 65,000 Btu/h. As discussed in section III.E.1, in response to the October 2018 RFI, all commenters supported fully harmonizing the test procedures for both 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and single-phase central air conditioners and central air conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h, which aligns with the proposals in this NOPR. DOE's Commercial HVAC Enforcement Policy does not apply to single-phase products and appendix M and M1 do not include any special treatment for these optional features within the test procedure. In addition, DOE has not received any waivers related to these features and DOE does not have technical justification to support differential treatment of such features for three-phase equipment as compared to single-phase products. As such, DOE has tentatively determined that any of these features present in 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h can also be tested in accordance with the proposed test procedure and that to maintain harmonization with single-phase products, it is not necessary or appropriate to adopt Appendix G of AHRI 210/240–2023 as part of DOE's test procedure. While there are currently no models on the market of 3-phase VRF with cooling capacity of less than 65,000 Btu/h, DOE expects that, if there were, the same tentative determination would apply for the same reasons. Were DOE to adopt the proposals in this NOPR, DOE would rescind the Commercial HVAC Enforcement Policy to the extent that it is applicable to 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. DOE notes that all models (with or without any specific feature) may be tested by DOE at any time under DOE's current authorities if such a model is distributed in commerce in the U.S.

Issue 2: DOE seeks comment on its proposal to incorporate by reference AHRI 210/240–2023 in the DOE test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. DOE also seeks comment on its proposal to require compliance with this test procedure on the compliance date of any amended energy conservation standards that DOE may decide to adopt later as part of a future rulemaking.

3. AHRI 1230

In May 2021, AHRI published AHRI 1230–2021, which excludes from its scope 3-phase VRF with cooling capacity of less than 65,000 Btu/h. As such, in this NOPR, DOE is considering revisions based on updated versions of AHRI 210/240 only, as AHRI 1230–2021 by its explicit terms is not applicable to the equipment considered in this NOPR.

As discussed, DOE is proposing to reference AHRI 210/240–2023 for testing 3-phase VRF with cooling capacity less than 65,000 Btu/h. As proposed, the current Federal test procedure for this equipment (which references ANSI/AHRI 1230–2010), would remain the required test procedure until DOE decides to adopt amended energy conservation standards for this equipment.

4. ASHRAE 37

ANSI/ASHRAE Standard 37, which provides a method of test for many categories of air conditioning and heating equipment, is referenced for testing by all versions of AHRI Standards 210/240 and 1230. Appendix E of AHRI 210/240–2023 provides additional instruction and exceptions regarding the application of the test methods specified in ANSI/ASHRAE 37–2009. ANSI/ASHRAE 37–2009 is referenced in ANSI/AHRI 1230–2010, which is currently the referenced industry test standard in the DOE test procedure for VRF multi-split systems. ANSI/ASHRAE 37–2005 is referenced by ANSI/AHRI 210/240–2008, which is currently the referenced industry test standard in the DOE test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h.

Given the use of ANSI/ASHRAE 37–2009 when testing according to AHRI 210/240–2023, DOE is proposing to

[19] The enforcement policy for commercial HVAC equipment can be found at *www.energy.gov/gc/downloads/commercial-equipment-testing-enforcement-policies.*

[20] These five features are high-static indoor blower or oversized motor; desuperheaters; outdoor fan with Variable Frequency Drive (''VFD''); indoor fan with VFD; and compressor with VFD.

reference ANSI/ASHRAE 37–2009 in its test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Specifically, in the proposed appendix B1, DOE is proposing to reference the applicable sections of ANSI/ASHRAE 37–2009—*i.e.,* all sections except sections 1, 2 and 4.[21]

F. Certification, Compliance, and Enforcement Requirements

In the October 2018 RFI, DOE also requested comment on whether the general structure and language related to its certification, compliance, and enforcement requirements for three-phase equipment in 10 CFR part 429 should mirror the structure and language of certification, compliance, and enforcement requirements for single-phase products already found in 10 CFR part 429. 83 FR 49501, 49505 (Oct. 2, 2018). DOE noted in the October 2018 RFI that AHRI 210/240–2017 included many updates to mirror these requirements, which apply to both single-phase products and three-phase equipment. *Id.*

CA IOUs, Ingersoll Rand, and NRDC and ASAP supported adopting the certification, compliance, and enforcement requirements for single-phase systems and applying them to three-phase systems. (CA IOUs, No. 2 at p. 2; Ingersoll Rand, No. 3 at p. 2; NRDC and ASAP, No. 5 at p. 2) AHRI stated that single-phase reporting requirements are significantly more onerous than what has historically been reported, and that the reporting requirements for both consumer and commercial products should be simplified. (AHRI, No. 4 at p. 2) Carrier supported harmonizing three-phase and single-phase requirements in 10 CFR part 429, stating that while the single-phase reporting requirements are significantly more onerous than what has historically been reported, aligning the reporting for the residential and commercial products is the simplest way to reduce manufacturer burden. (Carrier, No. 7 at p. 2)

After reviewing the comments, and given that AHRI has updated Standard 210/240 to include many of the requirements found in 10 CFR 429.16, DOE proposes to amend its representation requirements for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h by applying certain requirements currently applicable to single-phase central air conditioners and central air conditioning heat pumps (currently specified at 10 CFR 429.16 and 10 CFR 429.70(e)).[22] DOE is not proposing to amend its certification reporting requirements for the three-phase equipment that is the subject of this NOPR.

DOE is proposing to amend the basic model definition and product-specific enforcement provisions for the three-phase equipment specified at 10 CFR 431.92 and 10 CFR 429.134, respectively, to align with the provisions for single-phase products.

Harmonizing the representation requirements for three-phase equipment with the representation requirements for single-phase products, as discussed, would not increase manufacturer burden as compared to industry practice under the industry certification program. Further, these proposals would not apply until such time as DOE amends the energy conservation standards for this equipment to rely on SEER2 and HSPF2. Therefore, these proposals would not impose an undue burden on manufacturers. DOE's proposals are discussed in detail in the following sub-sections.

1. Representation Requirements

As discussed, DOE is proposing to amend certain representation requirements for the three-phase equipment addressed by this NOPR, to align with their single-phase counterparts. As part of this proposal, DOE is proposing to relocate its representation and certification requirements for three-phase equipment. Specifically, DOE is proposing that the representation and certification requirements for this three-phase equipment would be included in a new section 10 CFR 429.64 and excluded from the scope of 10 CFR 429.43. DOE is also proposing to establish a new section 10 CFR 429.70(i) for alternative energy determination method (''AEDM'') requirements that would apply to the three-phase equipment addressed in this NOPR. As proposed, manufacturers would not be required to comply with the amended representation requirements, if made final, until such time that amended standards are established that would require compliance with amended energy conservation standards that rely on SEER2 and HSPF2 (as applicable).

In particular, 10 CFR 429.43, which is applicable to commercial heating, ventilating, and air conditioning equipment, requires determination of the represented value for each basic model through either testing or by applying an AEDM, and 10 CFR 429.70(c)(2)(iv) specifies that each AEDM must be validated by testing at least two basic models. Under 10 CFR 429.16, which is applicable to central air conditioners and central air conditioning heat pumps, determination of represented values is based on each individual model or combination (rather than for each basic model), and generally requires a minimum level of testing for each basic model. For all basic models except outdoor units with no match and multi-split systems, multi-circuit systems, and multi-head mini-split systems, represented values for individual models or combinations other than those required to be tested may be determined by using an AEDM in accordance with 10 CFR 429.70(e), with no additional testing required to validate the AEDM beyond the minimum testing required by 10 CFR 429.16. For outdoor units with no match and multi-split systems, multi-circuit systems, and multi-head mini-split systems, 10 CFR 429.16 contains additional requirements for determining represented values.

Through its newly proposed provisions in 10 CFR 429.64 and 10 CFR 420.70(i), DOE would mirror the representation requirements in 10 CFR 429.16 and 10 CFR 429.70(e), except for the minimum testing requirements and certain AEDM validation requirements for each basic model of single-package unit and single-split systems. As discussed, 10 CFR 429.16 for central air conditioners and central air conditioning heat pumps generally requires testing for every basic model. For 3-phase equipment, DOE proposes in 10 CFR 429.64 to generally maintain the current approach that not all basic models of three-phase, less than 65,000 Btu/h single-package units and single split-systems must be tested. The following paragraphs describe in further detail DOE's proposal that would allow a manufacturer to use an AEDM for rating all basic models of three-phase, less than 65,000 Btu/h single-package units and single split-systems in the case that the manufacturer rates all models with AEDMs validated with testing of otherwise identical single-phase models (*i.e.,* no testing of 3-phase equipment required), and would require testing of only two basic models of 3-

[21] DOE is proposing to exclude reference to Section 1 (''Purpose), Section 2 (''Scope''), and Section 4 (''Classifications'') in ANSI/ASHRAE 37–2009 to avoid any potentially contradictory requirements with DOE regulations.

[22] DOE notes that these single-phase requirements are consistent with a consensus recommendation made by the Central Air Conditioners and Heat Pumps Working Group of the Appliance Standards and Rulemaking Federal Advisory Committee. (*See* CAC/HP Term Sheet, Docket No. EERE–2014–BT–STD–0048, No. 0076, Recommendation #7.)

phase equipment in other cases (*e.g.,* manufacturers that do not rate with an AEDM validated with testing of an otherwise identical single-phase model).

DOE has initially determined that an AEDM validated pursuant to 10 CFR 429.70(e) would also be appropriate for rating basic models of three-phase, less than 65,000 Btu/h single-package units and single split-systems that have otherwise identical single-phase counterparts. Specifically, DOE understands that the vast majority of three-phase equipment with a cooling capacity of less than 65,000 Btu/h has an otherwise identical single-phase consumer product counterpart offered by the same manufacturer, thus providing comparable performance between single-phase products and three-phase equipment with a cooling capacity of less than 65,000 Btu/h. Further, DOE has tentatively concluded that any slight differences in performance between single-phase and three-phase models (*e.g.,* minor differences in compressor performance depending on the electrical phase of the compressor motor) are well understood and can be accounted for within an AEDM (*e.g.,* slightly different compressor coefficients used to model performance for single-phase vs three-phase compressors), rather than requiring testing of three-phase models. Therefore, DOE has tentatively determined that for three-phase, less than 65,000 Btu/h single-package units and single split-systems with otherwise identical single-phase counterparts, ratings developed using an AEDM validated with the testing of otherwise identical single-phase central air conditioners and heat pumps would be no less representative than ratings developed using an AEDM validated with the testing of three-phase, less than 65,000 Btu/h equipment.

As such, for three-phase, less than 65,000 Btu/h single-package units and single split-systems, DOE proposes in 10 CFR 429.70(i)(2) to permit a manufacturer to rely on an AEDM for central air conditioners and heat pumps that is validated in accordance with 10 CFR 429.70(e)(2) with testing of otherwise identical single-phase counterparts, without additional validation testing.[23] If a manufacturer offers three-phase models that do not have otherwise identical single-phase counterparts, or the manufacturer has not validated an AEDM in accordance with 10 CFR 429.70(e)(2) with testing of the otherwise identical single-phase counterparts, the manufacturer would be required to test a single unit sample for each of two basic models to validate an AEDM, consistent with the existing requirements for all capacities of three-phase equipment. DOE expects that this case would arise only for a small number of manufacturers who do not produce otherwise identical single-phase and three-phase equipment, but instead manufacture a line of commercial three-phase equipment that includes equipment below DOE's 65,000 Btu/h capacity boundary.

In conjunction with this proposal, DOE proposes to specify in the newly proposed 10 CFR 429.70(i)(3) that ''otherwise identical'' means differing only in the phase of the electrical system and the phase of power input for which the motors and compressors are designed.

Issue 3: DOE seeks comment on its proposal to align the representation requirements for the three-phase equipment addressed by this NOPR with the requirements specified for single-phase products at 10 CFR 429.16 and 10 CFR 429.70(e),—but with the exception of testing requirements and certain AEDM validation requirements for single-package and single-split system models. Specifically, DOE requests comment on its proposal to permit for three-phase, less than 65,000 Btu/h single-package and single-split system basic models with otherwise identical single-phase counterparts the use of ratings based on an AEDM validated using the test results from otherwise identical central air conditioners and heat pumps, rather than requiring validation using the test results of three-phase models. DOE also requests comment on its proposed specification of the term ''otherwise identical''. Finally, DOE requests comment on whether the proposed AEDM requirements should include a provision to validate the correlation between single-phase and three-phase performance as determined using an AEDM.

As part of the harmonization with single-phase requirements, the proposal in 10 CFR 429.64 would require that all representations for outdoor units with no match and for multi-split systems, multi-circuit systems, and multi-head mini-split systems must be determined through testing or other specified means, rather than through an AEDM. As currently specified, 10 CFR 429.16(c)(2)–(3) do not permit AEDMs for single-phase products with these configurations; as such, there would not be any extensively validated AEDMs available for products and equipment with these configurations. DOE is not aware of any three-phase models on the market with these configurations (*i.e.,* outdoor unit with no match or multi-split, multi-circuit, and multi-head mini-split systems); therefore, DOE tentatively concludes that this proposal would not result in increased testing burden or costs for any manufacturer. DOE may consider permitting the use of an AEDM for these three-phase equipment categories if interested parties were to demonstrate a market for this equipment and provide information on what requirements for AEDM validation should be specified.

Issue 4: DOE seeks comment on whether there are three-phase, less than 65,000 Btu/h models of outdoor units with no match or multi-split, multi-circuit, and multi-head mini-split systems on the market, and, if so, whether AEDMs should be allowed for their ratings and what requirements for AEDM validation should be specified.

DOE notes that, as part of the harmonization with single-phase requirements, the proposal in 10 CFR 429.64 would require every individual combination of single-split-system AC equipped with a single-stage or two-stage compressor distributed in commerce to be rated as a coil-only combination, with additional blower-coil representations allowed as applicable. As discussed previously in this section, the three-phase equipment category may include models that are part of a line of commercial three-phase equipment that includes equipment below DOE's 65,000 Btu/h capacity boundary (rather than models that are otherwise identical to single-phase central air conditioners). Based on review of models certified in the DOE Compliance Certification Database, DOE expects almost all of these models to be packaged units, which are not impacted by this proposal.

Issue 5: DOE seeks comment on whether there are models of three-phase single-split-system air conditioners with single-stage or two-stage compressors that are not distributed in commerce as a coil-only combination (*i.e.,* distributed in commerce only as blower-coil combination(s)).

2. Basic Model Definition

DOE proposes to amend its basic model definition for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h to align with that for single-phase central air conditioners and central air conditioning heat pumps, as this definition forms the basis for the requirements in 10 CFR 429.16.

[23] While the AEDM would not need additional validation testing, it would need to reflect the slight difference in performance between single-phase and three-phase components.

The current definition of basic model for three-phase equipment in 10 CFR 431.92 refers to ''all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.'' *See* 10 CFR 431.92(2).[24] The definition of ''basic model'' for single-phase products in 10 CFR 430.2 provides additional specifications on this same concept. See 10 CFR 430.2 (defining the term ''basic model'' and detailing the application of this term to different configurations of central air conditioners and central air conditioner heat pumps). For example, for split systems manufactured by outdoor unit manufacturers, a basic model includes all individual combinations having the same model of outdoor unit but with percentage variation limits on compressor, outdoor coil, and outdoor fan characteristics. See *id.*

Issue 6: DOE requests comment on its proposal to align the definition of basic model for three-phase equipment at 10 CFR 431.96 with that for single-phase products at 10 CFR 430.2.

3. Certification Reporting Requirements

DOE acknowledges that 10 CFR 429.16 currently requires more detail in filed certification reports than that required by 10 CFR 429.43. Therefore, DOE proposes to retain the requirements for certification reports (*i.e.,* the information that must be reported for each individual model or combination) currently found in 10 CFR 429.43 rather than adopting wholesale the certification report requirements for single-phase products found in 10 CFR 429.16.

In response to the October 2018 RFI, Carrier commented that the three-phase requirements should mirror the structure, language, and certification requirements for single-phase systems to minimize the manufacturer's burden. (Carrier, No. 7 at p. 2). In general, DOE agrees with Carrier's comments that further aligning certification reporting requirements across single-phase products and three-phase equipment could reduce overall manufacturer burden despite the additional single-phase requirements. Therefore, should interested parties provide detail as to which information required as part of the certification reports required under 10 CFR 429.16(e) would be particularly burdensome to report and not impact DOE's ability to conduct enforcement testing, DOE may consider changes to the reporting requirements for both single-phase products and three-phase equipment in a separate rulemaking.

In addition, DOE may consider minor revisions to the certification reporting requirements in any energy conservation standards rulemaking that DOE may conduct for this equipment.

Issue 7: DOE seeks comment on its proposal not to amend certification reporting requirements for the three-phase equipment subject to this notice to align with single-phase products at this time. DOE also requests details on whether any particular certification reporting requirements in 10 CFR 429.16(e) are particularly problematic for manufacturers (for both single-phase products and three-phase equipment) and why.

4. Product-Specific Enforcement Provisions

DOE is proposing to amend its product-specific enforcement requirements by adding provisions to a new 10 CFR 429.134(s) for the three-phase equipment addressed in this NOPR that would align with those already required at 10 CFR 429.134(k) for single-phase products. These provisions would pertain only to DOE assessment and enforcement testing and would not impact manufacturer testing. Additionally, these requirements would apply only to equipment subject to any potential standards that DOE may set in terms of SEER2 and HSPF2.

Regarding cooling capacity, DOE is proposing that the cooling capacity of each tested unit would be measured pursuant to the test procedure and that the mean of the measurement(s) would be used to determine compliance with the applicable standards.

Regarding cyclic degradation coefficients, which are a measure of efficiency loss that would occur as a result of the compressor cycling to meet a low load level in field applications, DOE is proposing to measure the cooling and/or heating cyclic degradation coefficient, C_D^c/C_D^h, respectively, by conducting the optional cyclic tests if the manufacturer certifies that they conducted the optional cyclic tests. If the manufacturer certifies that it did not conduct the optional cyclic tests, the proposal would require that the default C_D^c/C_D^h values would be used as the basis for calculating SEER or HSPF for each unit tested.

G. Test Procedure Costs

EPCA requires that the test procedures for commercial package air conditioning and heating equipment for small commercial package air conditioning and heating equipment, which includes 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, be generally accepted industry testing procedures or rating procedures developed or recognized by either AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2)–(3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

In this NOPR, DOE proposes to amend the existing test procedures for three-phase, less than 65,000 Btu/h equipment by incorporating by reference, with some modification, the updated version of the applicable industry test method, AHRI 210/240–2023, including the energy efficiency metrics SEER2 and HSPF2. DOE also proposes to amend certain representation requirements to more closely align with the representation requirements for single-phase central air conditioners and heat pumps. Amendments to both the test procedures and representation requirements in this NOPR are consistent with comments from interested parties who supported aligning the Federal regulations for the three-phase equipment addressed in this document with the regulations of their single-phase consumer product counterparts.

DOE has tentatively determined that these proposed test procedures would be representative of an average use cycle and would not be unduly burdensome for manufacturers to conduct. The proposed appendix B, measuring both SEER and HSPF per ANSI/AHRI 210/240–2008, does not contain any changes from the current Federal test procedure, and therefore would not require retesting solely as a result of DOE's adoption of this proposed amendment. The proposed test procedure in appendix B1, measuring both SEER2 and HSPF2 per AHRI 210/240–2023, would not lead to an increase in cost from appendix B testing. Specifically, DOE estimates that the cost for third-party lab testing according to the proposed appendix B1 would be $5,500 for air conditioners and $8,500 for heat

[24] The definition applicable to variable refrigerant flow systems is different in wording but similar in content. *See* 10 CFR 431.92(5).

pumps, consistent with the current test procedures.

As discussed in section III.F.1 of this NOPR, DOE is proposing to amend the representation requirements for certifying basic models of three-phase, less than 65,000 Btu/h equipment to harmonize with the requirements for single-phase products. For models of outdoor units with no match and multi-split, multi-circuit, and multi-head mini-split systems, this proposal may increase testing requirements for three-phase equipment compared to the existing requirements. However, DOE is not aware of any such models on the market in these categories—accordingly, DOE does not believe the proposed representation requirements will lead to an increase in testing cost for any manufacturer.

As discussed in section III.F.1 of this NOPR, DOE is proposing to amend the AEDM [25] requirements for certifying basic models of three-phase, less than 65,000 Btu/h single-package units and single-split systems. Because most manufacturers' models of three-phase, less than 65,000 Btu/h equipment are nearly identical to the corresponding single-phase, consumer products, DOE is proposing to allow the use of an AEDM validated using testing of otherwise identical single-phase counterparts for certifying basic models of three-phase, less than 65,000 Btu/h single package units and split systems. For manufacturers that produce both single-phase consumer products and three-phase, less than 65,000 Btu/h equipment, this proposal would reduce any burden that might result from the proposed test procedures in appendix B1 of this NOPR, because for such manufacturers all certification of three-phase, less than 65,000 Btu/h equipment could be conducted using AEDMs without resorting to the testing of three-phase, less than 65,000 Btu/h equipment.

As discussed previously throughout this NOPR, the proposed test procedure in appendix B1 would not be mandatory until such time as DOE decides whether to amend the energy conservation standards based on SEER2 and HSPF2. Given that most manufacturers of three-phase equipment that are the subject of this NOPR are AHRI members, and DOE is referencing the prevailing industry test procedure that was established for use in AHRI's certification program (which DOE presumes will be updated to include SEER2 and HSPF2), DOE expects that manufacturers will already be testing using the test methods in AHRI 210/240–2023 by January 1, 2023—the effective date for minimum SEER2 and HSPF2 levels in ASHRAE 90.1–2019 for three-phase equipment, and also the compliance date for testing according to appendix M1 for single-phase central air conditioners. Based on this expectation, DOE also has tentatively determined that the proposed test procedure amendments would not be expected to increase the testing burden on three-phase, less than 65,000 Btu/h equipment manufacturers. Additionally, DOE has tentatively determined that the test procedure amendments, if finalized, would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment.

Issue 8: DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's tentative determination that the proposed DOE test procedure amendments, if finalized, would not increase testing burden on manufacturers, compared to current industry practice as indicated by AHRI 210/240–2023.

H. Compliance Date

EPCA prescribes that, for the equipment at issue, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 360 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1))

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this test procedure proposed rulemaking does not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

The following sections detail DOE's IRFA for this test procedure rulemaking.

1. Description of Reasons Why Action Is Being Considered

DOE is proposing to amend the existing DOE test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. DOE must update the Federal test procedures to be consistent with the industry update unless there is clear and convincing evidence that the industry update would not be representative of an average use cycle or would be unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B))

2. Objective of, and Legal Basis for, Rule

EPCA requires that the test procedures for commercial package heating and cooling equipment, which includes 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, be generally accepted industry testing procedures or rating procedures developed or recognized by either AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and

[25] Manufacturers are not required to perform laboratory testing on all basic models. In accordance with 10 CFR 429.70, three-phase, less than 65,000 Btu/h manufacturers may elect to use AEDMs. An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing.

convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 614(a)(1)(A))

3. Description and Estimate of Small Entities Regulated

For manufacturers of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The equipment covered by this proposed rule is classified under North American Industry Classification System (''NAICS'') code 333415 ,[26] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE reviewed the test procedures proposed in this NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE used publicly available information to identify potential small businesses that manufacture equipment covered this this rulemaking. DOE identified thirty-seven manufacturers of equipment covered by this rulemaking. Of the thirty-seven, thirty manufacturers are original equipment manufacturers (''OEM''). DOE screened out companies that do not meet the definition of a ''small business'' or are foreign-owned and operated. DOE identified eight small, domestic OEMs for consideration. DOE used subscription-based business information tools to determine headcount and revenue of the small businesses.

Of those eight small OEMs, four of them are AHRI members and four are not AHRI members. Of the four non-AHRI-member small OEMs, two certify their 3-phase, less than 65,000 Btu/h equipment models in the AHRI Directory of Certified Product Performance (''AHRI Directory'').[27] Therefore, DOE identified two small OEMs who are not AHRI members and do not certify their covered equipment to the AHRI Directory.

4. Description and Estimate of Compliance Requirements

DOE assumed each small business would have different potential regulatory costs depending whether they are an OEM, they are a member of AHRI, and/or they currently certify equipment in the AHRI Directory. DOE understands all AHRI members and all manufacturers currently certifying in the AHRI Directory (including small businesses) will be testing their models in accordance with AHRI 210/240–2023, the industry test procedure DOE is proposing to reference, and using AHRI's certification program, which DOE presumes will be updated to include the SEER2 and HSPF2 metrics. The proposed test procedure amendments would not add any additional testing burden to manufacturers that are or will be using the AHRI 210/240–2023 test procedure for their models of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h.

DOE estimated the range of additional potential testing costs for the two small businesses that both are not AHRI members and do not certify their equipment that is the subject of this NOPR to the AHRI Directory. These small businesses would only incur additional testing costs if these small businesses would not have otherwise been using the AHRI 210/240–2023 test procedure to test their models of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Of these two small businesses, the first manufacturer certifies one basic model to the DOE Compliance Certification Database and the second manufacturer certifies two basic models to the DOE Compliance Certification Database.[28]

In this NOPR, DOE is proposing to relocate the current DOE test procedures to a new appendix B of subpart F of part 431 (''appendix B'') without change. DOE is also proposing an amended test procedure at appendix B1 to subpart F of part 431 (''appendix B1''). Specifically, DOE is proposing in appendix B1 to incorporate by reference the updated industry test standard AHRI 210/240–2023 for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h (for which the current Federal test procedure references AHRI 210–240–2008) and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h (for which the current Federal test procedure references AHRI 1230–2010). In addition, DOE is proposing to adopt the efficiency metrics, SEER2 and HSPF2, from AHRI 210/240–2023 in the test procedure at appendix B1. Finally, DOE is proposing to harmonize representation and enforcement requirements with those applicable to single-phase products.

Appendix B does not contain any changes from the current Federal test procedure, and therefore would have no cost to industry and would not require retesting solely as a result of DOE's adoption of this proposed amendment to the test procedure, if made final. The proposed appendix B1 adopts the most recent industry test procedure, AHRI 210/240–2023. DOE estimated the cost for third-party lab testing according to the proposed appendix B1 test procedure to be $8,500 for three-phase, less than 65,000 Btu/h heating equipment and $5,500 for three-phase, less than 65,000 Btu/h air conditioning equipment. If manufacturers conduct physical testing to certify a basic model of the equipment that is the subject of this NOPR, two units are required to be tested per basic model. However, manufacturers are not required to perform laboratory testing on all basic models, as manufacturers may elect to use AEDMs.[29] An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment

[26] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (Last accessed on July 16, 2021).

[27] The AHRI Directory of Certified Product Performance is available at *www.ahridirectory.org.*

[28] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms* (last accessed June 24, 2021).

[29] In accordance with 10 CFR 429.70.

and reduce the burden and cost associated with testing.

The first of the two analyzed small businesses manufactures one basic model of three-phase equipment with a cooling capacity less than 65,000 Btu/h—the model is an air conditioner. If this manufacturer used a third-party lab to test this basic model, DOE estimates this small business would incur additional testing costs of approximately $11,000. The annual revenue of the first small business is approximately $82.5 million. DOE estimates testing costs to be less than 0.01 percent of annual revenue for this small business.

The second of two analyzed small businesses manufactures two basic model of three-phase equipment with a cooling capacity of less than 65,000 Btu/h—the models are air conditioners. If this manufacturer used a third-party lab to test these basic models, DOE estimates this small business would incur additional testing costs of approximately $22,000. DOE estimates that annual revenue of this small business to be approximately $4 million. DOE estimates testing costs to be less than 0.6 percent of annual revenue for this small manufacturer. However, DOE notes that this second small business also manufactures single-phase central air conditioners and heat pumps; therefore, this manufacturer may use an AEDM for certifying their central air conditioner and heat pump (''CAC/HP'') models. Because the proposed test procedure in appendix B1 aligns with the test procedure for CACs/HPs at appendix M1 to subpart B of 10 CFR part 430, this manufacturer could avoid testing costs and, as a lower-cost alternative, use their CAC/HP AEDM to certify performance for the equipment that is the subject of this notice and further reduce potential costs.[30]

Issue 9: DOE requests comment on the number of small businesses DOE identified. DOE also seeks comment on the potential cost estimates for each small business identified, compared to current industry practice, as indicated in AHRI 210/240–2023.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered today.

6. Significant Alternatives to the Rule

DOE proposes to reduce burden on manufacturers, including small businesses, by allowing AEDMs in lieu of physically testing all basic models. The use of an AEDM is less costly than physical testing of models of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h.

Additionally, DOE considered alternative test methods and modifications to the AHRI 210/240–2023 test procedure for three-phase, small commercial package heating and cooling equipment with a cooling capacity of less than 65,000 Btu/h. However, DOE has tentatively determined that there are no better alternatives than the existing industry test procedures, in terms of both meeting the agency's objectives and reducing burden on manufacturers. Therefore, DOE is proposing to amend the existing DOE test procedure for this equipment through incorporation by reference of AHRI 210/240–2023.

In addition, individual manufacturers may petition for a waiver of the applicable test procedure. (*See* 10 CFR 431.401) Also, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR

[30] As discussed in section 111.G.1 of this NOPR, DOE is proposing to allow the use of a AEDM that is validated with single-phase CACs/HPs to be used for certifying 3-phase ACUACs and ACUHPs with cooling capacity less than 65,000 Btu/h.

13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA (42 U.S.C. 6297(d)). No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedures for measuring the energy efficiency of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h would reference testing methods contained in certain sections of the following commercial standards: AHRI 210/240–2023 and ANSI/ASHRAE 37–2009. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the following test standard:

(1) The test standard published by AHRI, titled ''2023 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' AHRI Standard 210/240–2023. AHRI Standard 210/240–2023 is an industry-accepted test procedure for measuring the performance of air conditioning and heating equipment. AHRI Standard 210/240–2023 is available on AHRI's website *www.ahrinet.org/search-standards.aspx.*

In this NOPR, DOE proposes to amend the incorporation by reference previously approved for the following test standard:

(2) The test standard published by ASHRAE, titled ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ANSI/ASHRAE Standard 37–2009. ANSI/ASHRAE Standard 37–2009 is an industry-accepted test procedure that provides a method of test for many categories of air conditioning and heating equipment. ANSI/ASHRAE Standard 37–2009 is available on ANSI's website at *https://webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009.*

(3) In this NOPR, DOE proposes to maintain and update the incorporation by reference previously approved for the following test standards: The test standard published by AHRI, titled 210/240–2008, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved by ANSI on October 27, 2011 and updated by addendum 1 in June 2011 and addendum 2 in March 2012. ANSI/AHRI Standard 210/240–2008 is an industry-accepted test procedure for measuring the performance of air conditioning and heating equipment. ANSI/AHRI Standard 210/240–2008 is available on AHRI's website at *www.ahrinet.org/search-standards.aspx.*

(4) The test standards published by AHRI titled, ANSI/AHRI Standard 1230–2010, ''2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-split Air-Conditioning and Heat Pump Equipment,'' approved August 2, 2010 and updated by addendum 1 in March 2011. ANSI/AHRI Standard 1230–2010 is an industry-accepted test procedure for measuring the performance of air conditioning and heating equipment. ANSI/AHRI Standard 1230–2010 is available on AHRI's website *www.ahrinet.org/search-standards.aspx.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If no participants register for the webinar then it will be cancelled. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=75&action=viewlive* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this NOPR, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will allow time for prepared general statements by participants and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other

participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this NOPR.[31] Submitting comments via *www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

Issue 1: DOE seeks comment on its proposal to maintain reference to ANSI/AHRI 210/240–2008 with Addenda 1 and 2 as the Federal test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h, until such time as compliance would be required with the amended test procedure referencing AHRI 210/240–2023.

Issue 2: DOE seeks comment on its proposal to incorporate by reference AHRI 210/240–2023 in the DOE test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. DOE also seeks comment on its proposal to require compliance with this test procedure on the compliance date of any amended energy conservation standards that DOE may

[31] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

decide to adopt later as part of a future rulemaking.

Issue 3: DOE seeks comment on its proposal to align the representation requirements for the three-phase equipment addressed by this NOPR with the requirements specified for single-phase products at 10 CFR 429.16 and 10 CFR 429.70(e),—but with the exception of testing requirements and certain AEDM validation requirements for single-package and single-split system models. Specifically, DOE requests comment on its proposal to permit for three-phase, less than 65,000 Btu/h single-package and single-split system basic models with otherwise identical single-phase counterparts the use of ratings based on an AEDM validated using the test results from otherwise identical central air conditioners and heat pumps, rather than requiring validation using the test results of three-phase models. DOE also requests comment on its proposed specification of the term ''otherwise identical''. Finally, DOE requests comment on whether the proposed AEDM requirements should include a provision to validate the correlation between single-phase and three-phase performance as determined using an AEDM.

Issue 4: DOE seeks comment on whether there are three-phase, less than 65,000 Btu/h models of outdoor units with no match or multi-split, multi-circuit, and multi-head mini-split systems on the market, and, if so, whether AEDMs should be allowed for their ratings and what requirements for AEDM validation should be specified.

Issue 5: DOE seeks comment on whether there are models of three-phase single-split-system air conditioners with single-stage or two-stage compressors that are not distributed in commerce as a coil-only combination (*i.e.,* distributed in commerce only as blower-coil combination(s)).

Issue 6: DOE requests comment on its proposal to align the definition of basic model for three-phase equipment at 10 CFR 431.96 with that for single-phase products at 10 CFR 430.2.

Issue 7: DOE seeks comment on its proposal not to amend certification reporting requirements for the three-phase equipment subject to this notice to align with single-phase products at this time. DOE also requests details on whether any particular certification reporting requirements in 10 CFR 429.16(e) are particularly problematic for manufacturers (for both single-phase products and three-phase equipment) and why.

Issue 8: DOE requests comment on its understanding of the impact of the test procedure proposals in this NOPR, specifically DOE's tentative determination that the proposed DOE test procedure amendments, if finalized, would not increase testing burden on manufacturers, compared to current industry practice as indicated by AHRI 210/240–2023.

Issue 9: DOE requests comment on the number of small businesses DOE identified. DOE also seeks comment on the potential cost estimates for each small business identified, compared to current industry practice, as indicated in AHRI 210/240–2023.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on November 5, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 9, 2021 .

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.4 by adding paragraph (c)(3) to read as follows.

§ 429.4 Materials incorporated by reference.

* * * * *

(c) * * *

(3) AHRI Standard 210/240–2023, (''AHRI 210/240–2023''), 2023 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment, approved 2020, IBR approved for §§ 429.64 and 429.134.

* * * * *

■ 3. Amend § 429.12 by revising paragraph (b)(8) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(b) * * *

(8) The test sample size as follows:

(i) The number of units tested for the basic model, or

(ii) In the case of single-split system or single-package central air conditioners and central air conditioning heat pumps; air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h; air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h; or multi-split, multi-circuit, or multi-head mini-split systems other than the ''tested combination'', the number of units tested for each individual combination or individual model, or

(iii) If an AEDM was used in lieu of testing, enter ''0'' (and in the case of central air conditioners and central air conditioning heat pumps, this must be indicated separately for each metric);

* * * * *

■ 4. Amend § 429.43 by:

■ a. Revising the section heading;

■ b. Removing paragraphs (b)(2)(iii), (iv,) (ix) and (x);

■ c. Redesignating paragraphs (b)(2)(v) through (viii), and (xi) through (xv) as paragraphs (b)(2)(iii) through (vi), and (vii) through (xi), respectively;

■ d. Removing paragraphs (b)(4)(iii) through (vi); and

■ e. Redesignating paragraphs (b)(4)(vii) through (xiv) as paragraphs (b)(4)(iii) through (x).

The revisions read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment (excluding air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units per hour and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with less than 65,000 British thermal units per hour cooling capacity).

* * * * *

■ 5. Add § 429.64 to read as follows:

§ 429.64 Air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units per hour and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 British thermal units per hour.

(a) *Applicability.* (1) For air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h subject to standards in terms of seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF), representations with respect to the energy use or efficiency, including compliance certifications, are subject to the requirements in § 429.43 of this title as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

(2) For air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h subject to standards in terms of seasonal energy efficiency ratio 2 (''SEER2'') and heating seasonal performance factor 2 (''HSPF2'') metrics, representations with respect to the energy use or efficiency, including compliance certifications, are subject to the requirements in this section. If manufacturers choose to certify compliance with any standards in terms of SEER2 and HSPF2 prior to the applicable compliance date for those standards, the requirements of this section must be followed.

(b) *Determination of Represented Value*—(1) Required represented values. Determine the represented values (including SEER2, HSPF2, cooling capacity, and heating capacity, as applicable) for the individual models/combinations (or ''tested combinations'') specified in the table to this paragraph (b)(1).

Category	Equipment subcategory	Required represented values
Single-Package unit	Single-Package AC (including Space-Constrained).	Every individual model distributed in commerce.
	Single-Package HP (including Space-Constrained).	
Outdoor Unit and Indoor Unit (Distributed in Commerce by OUM (Outdoor Unit Manufacturer)).	Single-Split-System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small-Duct, High Velocity Systems (SDHV)).	Every individual combination distributed in commerce must be rated as a coil-only combination. For each model of outdoor unit, this must include at least one coil-only value that is representative of the least efficient combination distributed in commerce with that particular model of outdoor unit. Additional blower-coil representations are allowed for any applicable individual combinations, if distributed in commerce.
	Single-Split-System AC with Other Than Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	Every individual combination distributed in commerce, including all coil-only and blower coil combinations.
	Single-Split-System HP (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV (including Space-Constrained).	For each model of outdoor unit, at a minimum, a non-ducted ''tested combination.'' For any model of outdoor unit also sold with models of ducted indoor units, a ducted ''tested combination.'' When determining represented values on or after the compliance date of any amended energy conservation standards, the ducted ''tested combination'' must comprise the highest static variety of ducted indoor unit distributed in commerce (*i.e.,* conventional, mid-static, or low-static). Additional representations are allowed, as described in paragraph (d)(3) of this section.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For each model of outdoor unit, an SDHV ''tested combination.'' Additional representations are allowed, as described in paragraph (d)(3) of this section.
Indoor Unit Only Distributed in Commerce by ICM (Independent Coil Manufacturer).	Single-Split-System Air Conditioner (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.

Category	Equipment subcategory	Required represented values
	Single-Split-System Heat Pump (including Space-Constrained and SDHV). Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For a model of indoor unit within each basic model, a SDHV ''tested combination.'' Additional representations are allowed, as described in section (d)(3)(ii) of this section.
Outdoor Unit with no Match		Every model of outdoor unit distributed in commerce (tested with a model of coil-only indoor unit as specified in paragraph (c)(2) of this section).

(2) Refrigerants. (i) If a model of outdoor unit (used in a single-split, multi-split, multi-circuit, multi-head mini-split, and/or outdoor unit with no match system) is distributed in commerce and approved for use with multiple refrigerants, a manufacturer must determine all represented values for that model using each refrigerant that can be used in an individual combination of the basic model (including outdoor units with no match or ''tested combinations''). This requirement may apply across the listed categories in the table in paragraph (b)(1) of this section. A refrigerant is considered approved for use if it is listed on the nameplate of the outdoor unit. If any of the refrigerants approved for use is HCFC–22 or has a 95 °F midpoint saturation absolute pressure that is ±18 percent of the 95 °F saturation absolute pressure for HCFC–22, or if there are no refrigerants designated as approved for use, a manufacturer must determine represented values (including SEER2, HSPF2, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match. If a model of outdoor unit is not charged with a specified refrigerant from the point of manufacture or if the unit is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 5.1.8 of AHRI 210/240–2023 (incorporated by reference, see § 429.4) (unless either (a) the factory charge is equal to or greater than 70% of the outdoor unit internal volume multiplied by the liquid density of refrigerant at 95 °F or (b) an A2L refrigerant is approved for use and listed in the certification report), a manufacturer must determine represented values (including SEER2, HSPF2, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match.

(ii) If a model is approved for use with multiple refrigerants, a manufacturer may make multiple separate representations for the performance of that model (all within the same individual combination or outdoor unit with no match) using the multiple approved refrigerants. In the alternative, manufacturers may certify the model (all within the same individual combination or outdoor unit with no match) with a single representation, provided that the represented value is no more efficient than its performance using the least-efficient refrigerant. A single representation made for multiple refrigerants may not include equipment in multiple categories or equipment subcategories listed in the table in paragraph (b)(1) of this section.

(3) *Limitations for represented values of individual combinations.* The following paragraph explains the limitations for represented values of individual combinations (or ''tested combinations'').

(i) Multiple product classes. Models of outdoor units that are rated and distributed in individual combinations that span multiple product classes must be tested, rated, and certified pursuant to paragraph (b) of this section as compliant with the applicable standard for each product class.

(ii) Reserved.

(4) *Requirements.* All represented values under paragraph (b) of this section must be based on testing in accordance with the requirements in paragraph (c) of this section or the application of an AEDM or other methodology as allowed in paragraph (d) of this section.

(c) *Units tested*—(1) *General.* The general requirements of § 429.11 apply to air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h, and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h; and

(2) *Sampling plans and represented values.* For individual models (for single-package systems) or individual combinations (for split-systems, including ''tested combinations'' for multi-split, multi-circuit, and multi-head mini-split systems) with represented values determined through testing, each individual model/combination (or ''tested combination'') must have a sample of sufficient size tested in accordance with the applicable provisions of this subpart. For heat pumps (other than heating-only heat pumps), all units of the sample population must be tested in both the cooling and heating modes and the results used for determining all representations. The represented values for any individual model/combination must be assigned such that:

(i) *Off-Mode.* Any represented value of power consumption or other measure of energy consumption for which consumers would favor lower values must be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, x is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(B) The upper 90 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And x is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90 percent one-tailed confidence interval with n − 1 degrees of freedom (from appendix A of this subpart). Round represented values of off-mode power consumption to the nearest watt.

(ii) *SEER2 and HSPF2.* Any represented value of the energy efficiency or other measure of energy consumption for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(B) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90 percent one-tailed confidence interval with n − 1 degrees of freedom (from appendix A of this subpart). Round represented values of SEER2 and HSPF2 to the nearest 0.05.

(iii) *Cooling Capacity and Heating Capacity.* The represented values of cooling capacity and heating capacity must each be a self-declared value that is:

(A) Less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(*2*) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90 percent one-tailed confidence interval with n − 1 degrees of freedom (from appendix D of this part).

(B) Rounded according to:

(*1*) The nearest 100 Btu/h if cooling capacity or heating capacity is less than 20,000 Btu/h,

(*2*) The nearest 200 Btu/h if cooling capacity or heating capacity is greater than or equal to 20,000 Btu/h but less than 38,000 Btu/h, and

(*3*) The nearest 500 Btu/h if cooling capacity or heating capacity is greater than or equal to 38,000 Btu/h and less than 65,000 Btu/h.

(d) *Determination of represented values*—(1) *All basic models except outdoor units with no match and multi-split systems, multi-circuit systems, and multi-head mini-split systems.*

(i) For every individual model/combination within a basic model, either—

(A) A sample of sufficient size, comprised of production units or representing production units, must be tested as complete systems with the resulting represented values for the individual model/combination obtained in accordance with paragraphs (c)(1) and (2) of this section; or

(B) The represented values of the measures of energy efficiency or energy consumption through the application of an AEDM in accordance with paragraph (e) of this section and § 429.70.

(2) *Outdoor units with no match.* All models of outdoor units with no match within a basic model must be tested with a model of coil-only indoor unit meeting the requirements of section 5.1.6.2 of AHRI 210/240–2023. Models of outdoor units with no match may not be rated with an AEDM, other than to determine the represented values for models using approved refrigerants other than the one used in testing.

(3) *For multi-split systems, multi-circuit systems, and multi-head mini-split systems.* The following applies:

(i) For each non-SDHV basic model, at a minimum, a manufacturer must test the model of outdoor unit with a ''tested combination'' composed entirely of non-ducted indoor units. For any models of outdoor units also sold with models of ducted indoor units, a manufacturer must test a second ''tested combination'' composed entirely of ducted indoor units (in addition to the non-ducted combination). The ducted ''tested combination'' must comprise the highest static variety of ducted indoor unit distributed in commerce (*i.e.,* conventional, mid-static, or low-static).

(ii) If a manufacturer chooses to make representations of a variety of a basic model (*i.e.,* conventional, low static, or mid-static) other than a variety for which a representation is required under paragraph (b)(1) of this section the manufacturer must conduct testing of a tested combination according to the requirements in paragraphs (c)(1) and (2) of this section.

(iii) For basic models that include mixed combinations of indoor units (*i.e.,* combinations that are comprised of any two of the following varieties—non-ducted, low-static, mid-static, and conventional ducted indoor units), the represented value for the mixed combination is the mean of the represented values for the individual component combinations as determined in accordance with paragraphs (c)(1) and (2) and paragraphs (d)(3)(i) and (ii) of this section.

(iv) For each SDHV basic model distributed in commerce by an OUM, the OUM must, at a minimum, test the model of outdoor unit with a ''tested combination'' composed entirely of SDHV indoor units. For each SDHV basic model distributed in commerce by an ICM, the ICM must test the model of indoor unit with a ''tested combination'' composed entirely of SDHV indoor units, where the outdoor unit is the least efficient model of outdoor unit with which the SDHV indoor unit will be paired. The least efficient model of outdoor unit is the model of outdoor unit in the lowest SEER2 combination as certified by the outdoor unit manufacturer. If there are multiple outdoor unit models with the same lowest SEER2 represented value, the indoor coil manufacturer may select one for testing purposes.

(v) For basic models that include SDHV and an indoor unit of another variety (*i.e.,* non-ducted, low-static, mid-static, and conventional ducted), the represented value for the mixed SDHV/other combination is the mean of the represented values for the SDHV and other tested combination as determined in accordance with paragraphs (c)(1) through (2) and paragraphs (d)(3)(i) through (ii) of this section.

(vi) All other individual combinations of models of indoor units for the same model of outdoor unit for which the manufacturer chooses to make representations must be rated as separate basic models, and the provisions of paragraphs (c)(1) through (2) and (d)(3)(i) through (v) of this section apply.

(e) *Alternative efficiency determination methods.* In lieu of testing, represented values of efficiency or consumption may be determined through the application of an AEDM pursuant to the requirements of § 429.70(i) and the provisions of this section.

(1) *Power or energy consumption.* Any represented value of the average off mode power consumption or other measure of energy consumption of an individual model/combination for which consumers would favor lower values must be greater than or equal to the output of the AEDM but no greater than the standard.

(2) *Energy efficiency.* Any represented value of the SEER2, HSPF2, or other measure of energy efficiency of an individual model/combination for which consumers would favor higher values must be less than or equal to the output of the AEDM but no less than the standard.

(3) *Cooling capacity.* The represented value of cooling capacity of an individual model/combination must be no greater than the cooling capacity output simulated by the AEDM.

(4) *Heating capacity.* The represented value of heating capacity of an individual model/combination must be no greater than the heating capacity output simulated by the AEDM.

(f) *Certification reports.* This paragraph specifies the information that must be included in a certification report.

(1) The requirements of § 429.12; and

(2) Pursuant to § 429.12(b)(13), for each individual model (for single-package systems) or individual combination (for split-systems, including outdoor units with no match and ''tested combinations'' for multi-split, multi-circuit, and multi-head mini-split systems), a certification report must include the following public equipment-specific information:

(i) Commercial package air conditioning equipment that is air-cooled with a cooling capacity of less than 65,000 Btu/h (3-Phase): The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh), and the rated cooling capacity in British thermal units per hour (Btu/h).

(ii) Commercial package heating equipment that is air-cooled with a cooling capacity of less than 65,000 Btu/h (3-Phase): The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh)), the heating seasonal performance factor (HSPF in British thermal units per Watt-hour (Btu/Wh)), and the rated cooling capacity in British thermal units per hour (Btu/h).

(iii) Variable refrigerant flow multi-split air conditioners that are air-cooled with rated cooling capacity of less than 65,000 Btu/h (3-Phase): The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh)) and rated cooling capacity in British thermal units per hour (Btu/h).

(iv) Variable refrigerant flow multi-split heat pumps that are air-cooled with rated cooling capacity of less than 65,000 Btu/h (3-Phase): The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh)), the heating seasonal performance factor (HSPF in British thermal units per Watt-hour (Btu/Wh)), and rated cooling capacity in British thermal units per hour (Btu/h).

(3) Pursuant to § 429.12(b)(13), for each individual model/combination (including outdoor units with no match and ''tested combinations''), a certification report must include supplemental information submitted in PDF format. The equipment-specific, supplemental information must include any additional testing and testing set up instructions (*e.g.,* charging instructions) for the basic model; identification of all special features that were included in rating the basic model; and all other information (*e.g.,* operational codes or component settings) necessary to operate the basic model under the required conditions specified by the relevant test procedure. A manufacturer may also include with a certification report other supplementary items in PDF format (*e.g.,* manuals) for DOE consideration in performing testing under subpart C of this part. The equipment-specific, supplemental information must include at least the following:

(i) Air cooled commercial package air conditioning equipment with a cooling capacity of less than 65,000 Btu/h (3-phase): The nominal cooling capacity in British thermal units per hour (Btu/h); rated airflow in standard cubic feet per minute (SCFM) for each fan coil; rated static pressure in inches of water; refrigeration charging instructions (*e.g.,* refrigerant charge, superheat and/or subcooling temperatures); frequency or control set points for variable speed components (*e.g.,* compressors, VFDs); required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions, if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model.

(ii) Commercial package heating equipment that is air-cooled with a cooling capacity of less than 65,000 Btu/h (3-phase): The nominal cooling capacity in British thermal units per hour (Btu/h); rated heating capacity in British thermal units per hour (Btu/h); rated airflow in standard cubic feet per minute (SCFM) for each fan coil; rated static pressure in inches of water; refrigeration charging instructions (*e.g.,* refrigerant charge, superheat and/or subcooling temperatures); frequency or control set points for variable speed components (*e.g.,* compressors, VFDs); required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions, if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model.

(iii) Variable refrigerant flow multi-split air conditioners that are air-cooled with a cooling capacity of less than 65,000 Btu/h (3-Phase): The nominal cooling capacity in British thermal units per hour (Btu/h); outdoor unit(s) and indoor units identified in the tested combination; components needed for heat recovery, if applicable; rated airflow in standard cubic feet per minute (SCFM) for each indoor unit; rated static pressure in inches of water; compressor frequency set points; required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions, if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model. Additionally, upon DOE request, the manufacturer must provide a layout of the system set-up for testing including charging instructions consistent with the installation manual.

(iv) Variable refrigerant flow multi-split heat pumps that are air-cooled with rated cooling capacity of less than 65,000 Btu/h (3-Phase): The nominal cooling capacity in British thermal units per hour (Btu/h); rated heating capacity in British thermal units per hour (Btu/h); outdoor unit(s) and indoor units identified in the tested combination; components needed for heat recovery, if applicable; rated airflow in standard cubic feet per minute (SCFM) for each indoor unit; rated static pressure in inches of water; compressor frequency set points; required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions, if

applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model. Additionally, upon DOE request, the manufacturer must provide a layout of the system set-up for testing including charging instructions consistent with the installation manual.

■ 6. Amend § 429.70 by:

■ a. Revising paragraph (c) introductory text;

■ b. Revising the tables in paragraphs (c)(2)(iv) and (c)(5)(vi)(B); and

■ c. Adding paragraph (i).

The revisions and addition read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(c) *Alternative efficiency determination method (AEDM) for commercial HVAC & WH products (excluding air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h* and *air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with less than 65,000 Btu/h cooling capacity), and commercial refrigerators, freezers, and refrigerator-freezers—*

* * * * *

(2) * * *

(iv) * * *

Validation class	Minimum number of distinct models that must be tested per AEDM
(A) Commercial HVAC validation classes	
Air-Cooled, Split and Packaged ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.
Air-Cooled, Variable Refrigerant Flow ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled	2 Basic Models.
(B) Commercial water heater validation classes	
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.
(C) Commercial packaged boilers validation classes	
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
(D) Commercial furnace validation classes	
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.
(E) Commercial refrigeration equipment validation classes	
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.
Remote Condensing Closed Freezers	2 Basic Models.

[1] The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

* * * * *

(5) * * *

(vi) * * *

Equipment	Metric	Applicable tolerance (%)
Commercial Packaged Boilers	Combustion Efficiency	5 (0.05)
	Thermal Efficiency	5 (0.05)
Commercial Water Heaters or Hot Water Supply Boilers	Thermal Efficiency	5 (0.05)
	Standby Loss	10 (0.1)
Unfired Storage Tanks	R-Value	10 (0.1)
Air-Cooled, Split and Packaged ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Water-Source HPs, All Capacities	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Single Package Vertical ACs and HPs	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
Packaged Terminal ACs and HPs	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
Variable Refrigerant Flow ACs and HPs (Excluding Air-Cooled, Three-phase with Less than 65,000 Btu/h Cooling Capacity).	Energy Efficiency Ratio	5 (0.05)
	Coefficient of Performance	5 (0.05)
	Integrated Energy Efficiency Ratio	10 (0.1)
Computer Room Air Conditioners	Sensible Coefficient of Performance	5 (0.05)
Commercial Warm-Air Furnaces	Thermal Efficiency	5 (0.05)
Commercial Refrigeration Equipment	Daily Energy Consumption	5 (0.05)

* * * * *

(i) *Alternate Efficiency Determination Method (AEDM) for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h* and *air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with less than 65,000 Btu/h cooling capacity.*

(1) *Applicability.* (i) For air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h subject to standards in terms of seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF), representations with respect to the energy use or efficiency, including compliance certifications, are subject to the requirements in § 429.70(c) of this title as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

(ii) For air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h subject to standards in terms of seasonal energy efficiency ratio 2 (''SEER2'') and heating seasonal performance factor 2 (''HSPF2'') metrics, representations with respect to the energy use or efficiency, including compliance certifications, are subject to the requirements in this section. If manufacturers choose to certify compliance with any standards in terms of SEER2 and HSPF2 prior to the applicable compliance date for those standards, the requirements of this section must be followed.

(2) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to an individual model/combination to determine its represented values (SEER2 and HSPF2, as applicable) pursuant to this section unless authorized pursuant to § 429.64(e) and:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency or energy consumption characteristics of the individual model or combination (SEER2 and HSPF2, as applicable) as measured by the applicable DOE test procedure; and

(ii) The manufacturer has validated the AEDM in accordance with paragraph (i)(3) of this section.

(3) *Validation of an AEDM.* For manufacturers whose models of air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h or air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h are otherwise identical to their central air conditioner and heat pump models (meaning differing only in phase of the electrical system and the phase of power input for which the motors and compressors are designed) and who have validated an AEDM for the otherwise identical central air conditioners and heat pumps under § 429.70(e)(2), no additional validation is required. For manufacturers whose models of air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h or air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h who have not validated an AEDM for otherwise identical central air conditioners and

heat pumps under § 429.70(e)(2) must, before using an AEDM, validate the AEDM's accuracy and reliability as follows:

(i) *Minimum testing.* The manufacturer must test a single unit each of two basic models in accordance with paragraph (i)(3)(iii) of this section. Using the AEDM, calculate the energy use or efficiency for each of the tested individual models/combinations within each basic model. Compare the represented value based on testing and the AEDM energy use or efficiency output according to paragraph (i)(3)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and reliability of the AEDM and that their representations are appropriate and the models being distributed in commerce meet the applicable standards, regardless of the amount of testing required in this paragraph.

(ii) *Individual model/combination tolerances.* This paragraph (i)(3)(ii) provides the tolerances applicable to individual models/combinations rated using an AEDM.

(A) The predicted represented values for each individual model/combination calculated by applying the AEDM may not be more than four percent greater (for measures of efficiency) or less (for measures of consumption) than the values determined from the corresponding test of the individual model/combination.

(B) The predicted energy efficiency or consumption for each individual model/combination calculated by applying the AEDM must meet or exceed the applicable federal energy conservation standard.

(iii) *Additional test unit requirements.* (A) Each AEDM must be supported by test data obtained from physical tests of current individual models/combinations; and

(B) Test results used to validate the AEDM must meet or exceed current, applicable Federal standards as specified in part 431 of this chapter; and

(C) Each test must have been performed in accordance with the applicable DOE test procedure with which compliance is required at the time the individual models/combinations used for validation are distributed in commerce.

(4) *AEDM records retention requirements.* If a manufacturer has used an AEDM to determine representative values pursuant to this section, the manufacturer must have available upon request for inspection by the Department records showing:

(i) The AEDM, including the mathematical model, the engineering or statistical analysis, and/or computer simulation or modeling that is the basis of the AEDM;

(ii) Product information, complete test data, AEDM calculations, and the statistical comparisons from the units tested that were used to validate the AEDM pursuant to paragraph (i)(3) of this section; and

(iii) Product information and AEDM calculations for each individual model/combination to which the AEDM has been applied.

(5) *Additional AEDM requirements.* If requested by the Department, the manufacturer must:

(i) Conduct simulations before representatives of the Department to predict the performance of particular individual models/combinations;

(ii) Provide analyses of previous simulations conducted by the manufacturer; and/or

(iii) Conduct certification testing of individual models or combinations selected by the Department.

(6) *AEDM verification testing.* DOE may use the test data for a given individual model/combination generated pursuant to § 429.104 to verify the represented value determined by an AEDM as long as the following process is followed:

(i) *Selection of units.* DOE will obtain one or more units for test from retail, if available. If units cannot be obtained from retail, DOE will request that a unit be provided by the manufacturer;

(ii) *Lab requirements.* DOE will conduct testing at an independent, third-party testing facility of its choosing. In cases where no third-party laboratory is capable of testing the equipment, testing may be conducted at a manufacturer's facility upon DOE's request.

(iii) *Testing.* At no time during verification testing may the lab and the manufacturer communicate without DOE authorization. If, during test set-up or testing, the lab indicates to DOE that it needs additional information regarding a given individual model or combination in order to test in accordance with the applicable DOE test procedure, DOE may organize a meeting between DOE, the manufacturer, and the lab to provide such information.

(iv) *Failure to meet certified value.* If an individual model/combination tests worse than its certified value (*i.e.,* lower than the certified efficiency value or higher than the certified consumption value) by more than 5 percent, or the test results in cooling capacity that is lower than its certified cooling capacity, DOE will notify the manufacturer. DOE will provide the manufacturer with all documentation related to the test set up, test conditions, and test results for the unit. Within the timeframe allotted by DOE, the manufacturer may present any and all claims regarding testing validity.

(v) *Tolerances.* This paragraph specifies the tolerances DOE will permit when conducting verification testing.

(A) For consumption metrics, the result from a DOE verification test must be less than or equal to 1.05 multiplied by the certified represented value.

(B) For efficiency metrics, the result from a DOE verification test must be greater than or equal to 0.95 multiplied by the certified represented value.

(vi) *Invalid represented value.* If, following discussions with the manufacturer and a retest where applicable, DOE determines that the verification testing was conducted appropriately in accordance with the DOE test procedure, DOE will issue a determination that the represented values for the basic model are invalid. The manufacturer must conduct additional testing and re-rate and re-certify the individual models/combinations within the basic model that were rated using the AEDM based on all test data collected, including DOE's test data.

(vii) *AEDM use.* This paragraph (i)(6)(vii) specifies when a manufacturer's use of an AEDM may be restricted due to prior invalid represented values.

(A) If DOE has determined that a manufacturer made invalid represented values on individual models/combinations within two or more basic models rated using the manufacturer's AEDM within a 24-month period, the manufacturer must test the least efficient and most efficient individual model/combination within each basic model in addition to the individual model/combination specified in § 429.16(b)(2). The 24-month period begins with a DOE determination that a represented value is invalid through the process outlined in paragraphs (i)(6)(i) through (vi) of this section.

(B) If DOE has determined that a manufacturer made invalid represented values on more than four basic models rated using the manufacturer's AEDM within a 24-month period, the manufacturer may no longer use an AEDM.

(C) If a manufacturer has lost the privilege of using an AEDM, the manufacturer may regain the ability to use an AEDM by:

(*1*) Investigating and identifying cause(s) for failures;

(*2*) Taking corrective action to address cause(s);

(*3*) Performing six new tests per basic model, a minimum of two of which must be performed by an independent,

third-party laboratory from units obtained from retail to validate the AEDM; and

(*4*) Obtaining DOE authorization to resume use of an AEDM.

■ 7. Section 429.134 is amended by adding paragraph (s) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(s) *Air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h* and *air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h.* The following provisions apply for assessment and enforcement testing of models subject to standards in terms of SEER2 and HSPF2 (as applicable).

(1) *Verification of cooling capacity.* The cooling capacity of each tested unit of the individual model (for single-package units) or individual combination (for split systems) will be measured pursuant to the test requirements of appendix B1 to subpart F of part 431. The mean of the cooling capacity measurement(s) (either the measured cooling capacity for a single unit sample or the average of the measured cooling capacities for a multiple unit sample) will be used to determine the applicable standards for purposes of compliance.

(2) *Verification of C_D value.* (i) For models other than models of outdoor units with no match, if manufacturers certify that they did not conduct the optional tests to determine the C^c and/or C^h value for an individual model (for single-package systems) or individual combination (for split systems), as applicable, the default C^c and/or C^h value will be used as the basis for calculation of SEER2 or HSPF2 for each unit tested. If manufacturers certify that they conducted the optional tests to determine the C^c and/or C^h value for an individual model (for single-package systems) or individual combination (for split systems), as applicable, the C^c and/or C^h value will be measured pursuant to the test requirements of appendix B1 to subpart F of part 431 for each unit tested and the result for each unit tested (either the tested value or the default value, as selected according to the criteria for the cyclic test in Sections 6.1.3.1 and 6.1.3.2 of AHRI 210/240–2023 (incorporated by reference, see § 429.4)) used as the basis for calculation of SEER2 or HSPF2 for that unit.

(ii) For models of outdoor units with no match, DOE will use the default Cc and/or Ch value pursuant to appendix B1 to subpart F of part 431.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 8. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 9. Amend § 431.92 in the definition of *Basic model,* by:

■ a. Revising paragraphs (2) and (5); and

■ b. Adding paragraph (7).

The revisions and addition read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Basic model includes:

* * * * *

(2) *Small, large, and very large air-cooled or water-cooled commercial package air conditioning and heating equipment* (excluding *air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h* cooling capacity) means all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

* * * * *

(5) *Variable refrigerant flow systems (excluding air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h)* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s) that have a common ''nominal'' cooling capacity and the same heat rejection medium (*e.g.,* air or water) (includes VRF water source heat pumps).

* * * * *

(7) *Air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h* and *air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h* means all units manufactured by one manufacturer; having the same primary energy source; and, which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; where essentially identical electrical, physical, and functional (or hydraulic) characteristics means:

(i) For split systems manufactured by outdoor unit manufacturers (OUMs): All individual combinations having the same model of outdoor unit, which means comparably performing compressor(s) [a variation of no more than five percent in displacement rate (volume per time) as rated by the compressor manufacturer, and no more than five percent in capacity and power input for the same operating conditions as rated by the compressor manufacturer], outdoor coil(s) [no more than five percent variation in face area and total fin surface area; same fin material; same tube material], and outdoor fan(s) [no more than ten percent variation in airflow and no more than twenty percent variation in power input];

(ii) For split systems having indoor units manufactured by independent coil manufacturers (ICMs): All individual combinations having comparably performing indoor coil(s) [plus or minus one square foot face area, plus or minus one fin per inch fin density, and the same fin material, tube material, number of tube rows, tube pattern, and tube size]; and

(iii) For single-package systems: All individual models having comparably performing compressor(s) [no more than five percent variation in displacement rate (volume per time) rated by the compressor manufacturer, and no more than five percent variations in capacity and power input rated by the compressor manufacturer corresponding to the same compressor rating conditions], outdoor coil(s) and indoor coil(s) [no more than five percent variation in face area and total fin surface area; same fin material; same tube material], outdoor fan(s) [no more than ten percent variation in outdoor airflow], and indoor blower(s) [no more than ten percent variation in indoor airflow, with no more than twenty percent variation in fan motor power input];

(iv) Except that,

(A) For single-package systems and single-split systems, manufacturers may instead choose to make each individual model/combination its own basic model provided the testing and represented value requirements in 10 CFR 429.64 of this chapter are met; and

(B) For multi-split, multi-circuit, and multi-head mini-split combinations, a

basic model may not include both individual small-duct, high velocity (SDHV) combinations and non-SDHV combinations even when they include the same model of outdoor unit. The manufacturer may choose to identify specific individual combinations as additional basic models.

* * * * *

■ 10. Amend § 431.95 by:
■ a. Removing paragraph (b)(1);
■ b. Redesignating paragraph (b)(2) as (b)(1);
■ c. Revising newly redesignated paragraph (b)(1);
■ d. Adding new paragraph (b)(2);
■ e. Revising paragraph (b)(6); and
■ f. Revising paragraph (c)(2).

The revisions and addition read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(b) * * *

(1) ANSI/AHRI Standard 210/240–2008, ''2008 Standard for *Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment*'', approved by ANSI on October 27, 2011 and updated by addendum 1 in June 2011 and addendum 2 in March 2012 (AHRI 210/240–2008), IBR approved for § 431.96 and appendix B to this subpart.

(2) AHRI Standard 210/240–2023, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved May 2020 (AHRI 210/240–2023), IBR approved for appendix B1 to this subpart.

* * * * *

(6) ANSI/AHRI Standard 1230–2010, ''2010 Standard for *Performance Rating of Variable Refrigerant Flow (VRF) Multi-split Air-Conditioning and Heat Pump Equipment,*'' approved August 2, 2010 and updated by addendum 1 in March 2011 (AHRI 1230–2010), IBR approved for § 431.96 and appendix B to this subpart.

(c) * * *

(2) ANSI/ASHRAE Standard 37–2009, (''ANSI/ASHRAE 37–2009''), ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009, IBR approved for § 431.96 and appendices A and B1 to this subpart.

* * * * *

■ 11. Amend § 431.96 by revising paragraph (b)(1) and Table 1 to paragraph (b)(2), to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) *Testing and calculations.* (1) Determine the energy efficiency of each type of covered equipment by conducting the test procedure(s) listed in table 1 to this section along with any additional testing provisions set forth in paragraphs (c) through (g) of this section and appendices A, B, and B1 to this subpart, that apply to the energy efficiency descriptor for that equipment, category, and cooling capacity. The omitted sections of the test procedures listed in table 1 to this section must not be used. For equipment with multiple appendices listed in table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

(2) * * *

TABLE 1 TO § 431.96—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions, and procedures in [1]	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	Appendix B to this subpart [2].	None.
			SEER2 and HSPF2.	Appendix B1 to this subpart [2].	None.
	Air-Cooled AC and HP.	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP.	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1 (1998).	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP.	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP.	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners	AC	<65,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).

TABLE 1 TO § 431.96—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity	Energy efficiency descriptor	Use tests, conditions, and procedures in [1]	Additional test procedure provisions as indicated in the listed paragraphs of this section
		≥65,000 Btu/h and <760,000 Btu/h.	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase).	SEER	Appendix B to this subpart [2].	None.
			SEER2	Appendix B1 to this subpart [2].	None.
		≥65,000 Btu/h and <760,000 Btu/h.	EER	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase).	SEER and HSPF	Appendix B to this subpart [2].	None.
			SEER2 and HSPF2.	Appendix B1 to this subpart [2].	None.
		≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	AHRI 1230–2010 (omit sections 5.1.2 and 6.6).	Paragraphs (c), (d), (e), and (f).
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	AHRI 390–2003 (omit section 6.4).	Paragraphs (c) and (e).

[1] Incorporated by reference, as applicable; see § 431.95.
[2] For equipment with multiple appendices listed in Table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

■ 12. Add appendix B to subpart F of part 431 to read as follows:

Appendix B to Subpart F of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/H and Air-Cooled, Three-Phase, Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 BTU/H

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standard from § 431.97 as that standard appeared in the January 1, 2021 edition of 10 CFR parts 200–499. Specifically, before [Date 360 days following publication of the final rule] representations must be based upon results generated either under this appendix or under 10 CFR 431.96 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

Note: For any amended standards for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h that rely on SEER2 and HSPF2 published after January 1, 2021, manufacturers must use the results of testing under appendix B1 to determine compliance.

Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendices B or B1) when determining compliance with the relevant standard. Manufacturers may also use appendix B1 to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. *Incorporation by Reference*

DOE incorporated by reference in § 431.95, the entire standard for ANSI/AHRI 210/240–2008, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment''; and ANSI/AHRI 1230–2010, ''Performance Rating of Variable Refrigerant Flow (VRF) Multi-split Air-conditioning and Heat Pump Equipment.'' However, certain enumerated provisions of those standards, as set forth in paragraphs (a) and (b) of this section, are inapplicable. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

(a) ANSI/AHRI 210/240–2008:

(i) Section 6.5 is inapplicable as specified in section 2.1 of this appendix.

(ii) Reserved.

(b) ANSI/AHRI 1230–2010:

(i) Section 5.1.2—*Manufacturer involvement* is inapplicable as specified in section 2.2(1) of this appendix.

(ii) Section 6.6—*Verification testing and uncertainty* is inapplicable as specified in section 2.2(2) of this appendix.

2. *General*

2.1 *Air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h.* Determine the seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF) (as applicable) in accordance with ANSI/AHRI 210/240–2008; however, Section 6.5, *Tolerances,* of ANSI/AHRI 210/240–2008 is not applicable. Sections 3 and 4 of this appendix provide additional instructions for determining SEER and HSPF. In cases where there is a conflict, the language of this appendix takes precedence over ANSI/AHRI 210/240–2008.

1.2. *Air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h.* Determine the SEER and HSPF (as applicable) in accordance with ANSI/AHRI 1230–2010; however, the following enumerated provisions of that document are not applicable.

(1) Section 5.1.2—Manufacturer involvement,

(2) Section 6.6—Verification testing and uncertainty

Sections 3 through 6 of this appendix provide additional instructions for determining SEER and HSPF. In cases where there is a conflict, the language of this appendix takes precedence over ANSI/AHRI 1230–2010.

3. *Optional break-in period.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method specified in this appendix. A

manufacturer who elects to use an optional compressor break-in period in its certification testing should record this period's duration as part of the information in the supplemental testing instructions under 10 CFR 429.43.

4. *Additional provisions for equipment set-up.* The only additional specifications that may be used in setting up the basic model for test are those set forth in the installation and operation manual shipped with the unit. Each unit should be set up for test in accordance with the manufacturer installation and operation manuals. Sections 3.1 through 3.3 of this appendix provide specifications for addressing key information typically found in the installation and operation manuals.

4.1. If a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its installation and operation manual for a given basic model, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation and operation manual, in which case the specified rating value shall be used.

4.2. The airflow rate used for testing must be that set forth in the installation and operation manuals being shipped to the commercial customer with the basic model and clearly identified as that used to generate the DOE performance ratings. If a rated airflow value for testing is not clearly identified, a value of 400 standard cubic feet per minute (scfm) per ton shall be used.

4.3. For air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h, the test set-up and the fixed compressor speeds (*i.e.,* the maximum, minimum, and any intermediate speeds used for testing) should be recorded and maintained as part of the test data underlying the certified ratings that is required to be maintained under 10 CFR 429.71.

5. *Refrigerant line length corrections for air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h.* For test setups where it is physically impossible for the laboratory to use the required line length listed in Table 3 of the ANSI/AHRI 1230–2010, then the actual refrigerant line length used by the laboratory may exceed the required length and the following cooling capacity correction factors are applied:

Piping length beyond minimum, X (ft)	Piping length beyond minimum, Y (m)	Cooling capacity correction (%)
0 > X ≤ 20	0 > Y ≤ 6.1	1
20 > X ≤ 40	6.1 > Y ≤ 12.2	2
40 > X ≤ 60	12.2 > Y ≤ 18.3	3
60 > X ≤ 80	18.3 > Y ≤ 24.4	4
80 > X ≤ 100	24.4 > Y ≤ 30.5	5
100 > X ≤ 120	30.5 > Y ≤ 36.6	6

6. *Manufacturer involvement in assessment or enforcement testing for air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h.* A manufacturer's representative will be allowed to witness assessment and/or enforcement testing. The manufacturer's representative will be allowed to inspect and discuss set-up only with a DOE representative and adjust only the modulating components during testing in the presence of a DOE representative that are necessary to achieve steady-state operation. Only previously documented specifications for set-up as specified under sections 3 and 4 of this appendix will be used.

■ 13. Add appendix B1 to subpart F of part 431 to read as follows:

Appendix B1 to Subpart F of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 BTU/H and Air-Cooled, Three-Phase, Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 BTU/H

Note: Manufacturers must use the results of testing under this appendix to determine compliance with any amended standards for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h provided in § 431.97 that are published after January 1, 2021, and that rely on seasonal energy efficiency ratio 2 (SEER2) and heating seasonal performance factor 2 (HSPF2). Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendices B or B1) when determining compliance with the relevant standard. Manufacturers may also use this appendix to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for AHRI Standard 210/240–2023, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,'' approved 2020 (AHRI 210/240–2023); and ANSI/ASHRAE Standard 37–2009, (''ANSI/ASHRAE 37–2009''), ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' ASHRAE approved June 24, 2009. However, certain enumerated provisions of AHRI 210/240–2023 and ANSI/ASHRAE 37–2009, as set forth in paragraphs (a) and (b) of this section, are inapplicable. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

(a) AHRI 210/240–2023:

(i) Section 6 Rating Requirements—6.1 Standard Ratings—6.1.8 Tested Combinations or Tested Units is inapplicable as specified in section 2.1(1) of this appendix,

(ii) Section 6 Rating Requirements—6.2 Application Ratings is inapplicable as specified in section 2.1(2) of this appendix,

(iii) Section 6 Rating Requirements—6.4 Ratings is inapplicable as specified in section 2.1(3) of this appendix,

(iv) Section 6 Rating Requirements—6.5 Uncertainty and Variability is inapplicable as specified in section 2.1(4) of this appendix,

(v) Section 7 Minimum Data Requirements for Published Ratings is inapplicable as specified in section 2.1(5) of this appendix,

(vi) Section 8 Operating Requirements is inapplicable as specified in section 2.1(6) of this appendix,

(vii) Section 9 Marking and Nameplate Data is inapplicable as specified in section 2.1(7) of this appendix,

(viii) Section 10 Conformance Conditions is inapplicable as specified in section 2.1(8) of this appendix,

(ix) Appendix C Certification of Laboratory Facilities Used to Determine Performance of Unitary Air-Conditioning & Air-Source Heat Pump Equipment—Informative is inapplicable as specified in section 2.1(9) of this appendix,

(x) Appendix F ANSI/ASHRAE Standard 116–2010 Clarifications/Exceptions—Normative—F15.2 and F17 are inapplicable as specified in section 2.1(10) of this appendix,

(xi) Appendix G Unit Configuration for Standard Efficiency Determination—Normative is inapplicable as specified in section 2.1(11) of this appendix,

(xi) Appendix H Off-Mode Testing—Normative is inapplicable as specified in section 2.1(12) of this appendix,

(xii) Appendix I Verification Testing—Normative is inapplicable as specified in section 2.1(13) of this appendix.

(b) ANSI/ASHRAE 37–2009:

(i) Section 1 Purpose is inapplicable as specified in section 2.2(1) of this appendix,

(ii) Section 2 Scope is inapplicable as specified in section 2.2(2) of this appendix, and

(iii) Section 4 Classification is inapplicable as specified in section 2.2(3) of this appendix.

2. *General.* Determine the seasonal energy efficiency ratio 2 (SEER2) and heating seasonal performance factor 2 (HSPF2) (as applicable) in accordance with AHRI 210/240–2023, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment'' and ANSI/ASHRAE 37–2009 ''Methods of Testing for Rating Electronically Driven Unitary Air-Conditioning and Heat Pump Equipment''; however, the following enumerated provisions of that document are not applicable. Sections 3 and 4 of this appendix provide additional instructions for determining SEER2 and HSPF2. In cases where there is a conflict, the language of this appendix takes precedence over AHRI 210/240–2023. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and a notice of any change in the incorporation will be published in the **Federal Register**.

2.1. *Excepted sections of AHRI 210/240–2023*

(1) Section 6 Rating Requirements—6.1 Standard Ratings—6.1.8 Tested Combinations or Tested Units,

(2) Section 6 Rating Requirements—6.2 Application Ratings,

(3) Section 6 Rating Requirements—6.4 Ratings,

(4) Section 6 Rating Requirements—6.5 Uncertainty and Variability,

(5) Section 7 Minimum Data Requirements for Published Ratings,

(6) Section 8 Operating Requirements,

(7) Section 9 Marking and Nameplate Data,

(8) Section 10 Conformance Conditions,

(9) Appendix C Certification of Laboratory Facilities Used to Determine Performance of Unitary Air-Conditioning & Air-Source Heat Pump Equipment—Informative,

(10) Appendix F ANSI/ASHRAE Standard 116–2010 Clarifications/Exceptions—Normative—F15.2 and F17,

(11) Appendix G Unit Configuration for Standard Efficiency Determination—Normative,

(12) Appendix H Off-Mode Testing—Normative, and

(13) Appendix I Verification Testing—Normative.

2.2. *Excepted sections of ANSI/ASHRAE 37–2009*

(1) Section 1 Purpose,

(2) Section 2 Scope,

(3) Section 4 Classification.

3. *Energy Measurement Accuracy.* The watt-hour (W·h) measurement system(s) shall be accurate within ±0.5 percent or 0.5 W·h, whichever is greater, for both ON and OFF cycles. If two measurement systems are used, then the meters shall be switched within 15 seconds of the start of the OFF cycle and switched within 15 seconds prior to the start of the ON cycle.

4. *Cycle Stability Requirements.* Conduct three complete compressor OFF/ON cycles. Calculate the degradation coefficient C_D for each complete cycle. If all three C_D values are within 0.02 of the average C_D then stability has been achieved, and the highest C_D value of these three shall be used. If stability has not been achieved, conduct additional cycles, up to a maximum of eight cycles total, until stability has been achieved between three consecutive cycles. Once stability has been achieved, use the highest C_D value of the three consecutive cycles that establish stability. If stability has not been achieved after eight cycles, use the highest C_D from cycle one through cycle eight, or the default $C_{D,}$ whichever is lower.

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